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CA1 Z 2 -C 52

FIRST MINISTERS' CONFERENCE ON
ABORIGINAL CONSTITUTIONAL MATTERS
APRIL 2 - 3, 1985

## Agenda

- 1. Self-Government for the Aboriginal Peoples
- 2. Sexual Equality Rights
- 3. Mandate for Continued Discussions
- 4. Nature of an Accord



DOCUMENT: 800-20/001

CONFÉRENCE DES PREMIERS MINISTRES SUR LES QUESTIONS CONSTITUTIONNELLES INTÉRESSANT LES AUTOCHTONES LES 2 ET 3 AVRIL 1985

## Ordre du jour

- 1. L'autonomie gouvernementale pour les autochtones
- 2. Égalité des droits pour les deux sexes
- 3. Mandat relatif à la poursuite des discussions
- 4. Nature d'un accord

CA1 Z 2 -C 52

CONFÉRENCE DES PREMIERS MINISTRES
SUR LES QUESTIONS CONSTITUTIONNELLES
INTÉRESSANT LES AUTOCHTONES
LES 2 ET 3 AVRIL 1985

Secretory .

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FIRST MINISTERS' CONFERENCE ON
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- Self-Government for the Aboriginal Peoples
- 2. Sexual Equality Rights
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CA1 Z 2 -C 52

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OPENING STATEMENT BY
THE HONOURABLE FRANK S. MILLER
PREMIER OF ONTARIO

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THE FIRST MINISTERS' CONFERENCE
ON ABORIGINAL CONSTITUTIONAL
MATTERS

OTTAWA, APRIL 2, 1985



PRIME MINISTER MULRONEY, FELLOW PREMIERS AND LEADERS OF TERRITORIAL GOVERNMENTS, ABORIGINAL REPRESENTATIVES:

I AM PLEASED TO HAVE THE OPPORTUNITY TO

PARTICIPATE IN A CONSTITUTIONAL CONFERENCE OF SUCH

IMPORTANCE.

AS IS OBVIOUS FROM A GLANCE AT THE REPRESENTATIVES OF OUR PROVINCE HERE AT THE CONFERENCE, ONTARIO HAS UNDERGONE A RECENT CHANGE IN LEADERSHIP AND IN THE MINISTERS HAVING RESPONSIBILITIES RELATED TO THESE MATTERS. I WANT TO ASSURE YOU, HOWEVER, THAT THESE CHANGES DO NOT SIGNIFY ANY SHIFT IN ONTARIO'S POSITION REGARDING THE ISSUES BEFORE US.

My government is committed to continuing with the constructive approach taken by my predecessor, the Honourable William Davis, and his ministerial Colleagues.

Nous admettons tous le fait que les problèmes dont nous avons entrepris l'examen sont extrêmement complexes. Nous n'avons pas essayé de minimiser nos DIVERGENCES D'OPINIONS; ET NOUS N'AVONS PAS NON PLUS NIÉ L'EXISTENCE DE CERTAINS FACTEURS HISTORIQUES DONT IL FAUT TENIR COMPTE, DANS UNE CERTAINE MESURE.

WE ALL RECOGNIZE THE FACT THAT THE ISSUES WE ARE DEALING WITH ARE EXCEEDINGLY COMPLEX. WE HAVE NOT TRIED TO MINIMIZE THE DEGREE TO WHICH THERE ARE DIFFERENT VIEWS AROUND THIS TABLE, NOR HAVE WE DENIED THAT THERE ARE HISTORICAL FACTORS THAT IN SOME MEASURE MUST BE TAKEN INTO ACCOUNT.

LIKE SO MANY OTHER MEETINGS WE HAVE IN THIS
COUNTRY, A PARTICULAR MEASURE OF COMPROMISE AND
FLEXIBILITY WILL BE NECESSARY ON THIS OCCASION IF WE ARE
TO SUCCEED.

I AM ALSO AWARE OF THE FACT THAT THERE ARE DIFFERING PERSPECTIVES WITH REGARD TO THE PROGRESS OF THE DISCUSSIONS THEMSELVES.

ON THE ONE HAND, ABORIGINAL PEOPLES FEEL THAT
OUR ACCOMPLISHMENTS TO DATE HAVE BEEN LIMITED.

GOVERNMENTS, ON THE OTHER HAND, ARE

CONSTRAINED BY THEIR NEED TO UNDERSTAND MORE FULLY THE

PRACTICAL IMPLICATIONS OF ABORIGINAL RIGHTS.

WHILE THESE DIFFERENCES DO EXIST, I THINK

THERE IS THE POTENTIAL FOR COMPROMISE AT THIS

CONFERENCE. I AM CONSCIOUS OF THE NEED TO GET DOWN TO

NEGOTIATIONS ON CONCRETE MATTERS.

I BELIEVE THAT OUR DECISION TO FOCUS LARGELY
UPON THE AGENDA ITEM "SELF-GOVERNMENT FOR THE ABORIGINAL
PEOPLES" IS A RECOGNITION OF THIS OPPORTUNITY. AS WELL,
WE HAVE CONCLUDED THAT THIS SUBJECT REQUIRES TRIPARTITE
NEGOTIATIONS WITH EACH OF THE ABORIGINAL GROUPS WITHIN
OUR PROVINCE.

AS WELL, I THINK WE ALL ACCEPT THE FACT THAT
ANY INSTITUTIONS OF SELF-GOVERNMENT MUST REFLECT THE
PARTICULAR CIRCUMSTANCES OF THE DIFFERENT ABORIGINAL
PEOPLES AND MUST BE SEEN TO COMPLEMENT OUR EXISTING
GOVERNMENTAL INSTITUTIONS.

THE REAL QUESTION BEFORE US, THEN, IS HOW WE TAKE THE NEXT STEP WHICH WILL PERMIT US TO PROCEED WITH THE DETAILED NEGOTIATIONS WHICH MUST TAKE PLACE.

ONTARIO HAS CHOSEN TO SUPPORT A CONSTITUTIONAL APPROACH.

THIS APPROACH WOULD SEE US RECOGNIZE AN ABORIGINAL RIGHT TO SELF-GOVERNMENT WITHIN THE CANADIAN FEDERATION AND THEN MAKE THAT RIGHT OPERATIVE ONLY THROUGH NEGOTIATED AGREEMENTS AMONG THE FEDERAL GOVERNMENT, THE PROVINCES OR TERRITORIES, AND THE VARIOUS ABORIGINAL PEOPLES.

IN THIS WAY, WE WILL PUT IN PLACE A MEANINGFUL SYMBOL OF OUR BELIEF IN THE UNIQUE VALUE OF THE ABORIGINAL CULTURES AND SOCIETIES.

AT THE SAME TIME, WE WILL ACKNOWLEDGE THE FACT
THAT ONLY THROUGH NEGOTIATIONS WITH GOVERNMENTS CAN
THOSE RIGHTS BE DEFINED IN AN APPROPRIATE AND SENSITIVE
WAY.

TO THE GENERAL PUBLIC, THIS APPROACH MAKES

CLEAR OUR DESIRE TO MEET ABORIGINAL NEEDS WHILE, AT THE

SAME TIME, RESPECTING THE INTERESTS OF ALL RESIDENTS OF

OUR COUNTRY AND ITS PROVINCES AND TERRITORIES.

IF WE ADOPT THIS APPROACH, THE PEOPLE OF CANADA WILL KNOW THAT WHATEVER THE OUTCOME OF THE

NEGOTIATIONS, ABORIGINAL SELF-GOVERNMENT WILL HAVE TO BE DEVELOPED WITHIN THE CONTEXT OF CANADIAN FEDERALISM AND WILL HAVE TO BE COMPATIBLE WITH OUR EXISTING INSTITUTIONS.

BY PROVIDING THAT ANY RIGHT TO SELF-GOVERNMENT COMES INTO BEING ONLY THROUGH NEGOTIATED AGREEMENTS, IT ENSURES ADEQUATE SAFEGUARDS.

BY ESTABLISHING NEGOTIATIONS AT THE PROVINCIAL AND TERRITORIAL LEVELS, IT OFFERS THE KIND OF FLEXIBILITY AND SENSITIVITY WE NEED TO ADDRESS THE DIFFERING CIRCUMSTANCES OF OUR ABORIGINAL PEOPLES.

THEREFORE, ONTARIO SUPPORTS A CONSTITUTIONAL AGREEMENT WHICH WILL GIVE US THE MEANS TO IDENTIFY SUCH A RIGHT, WHILE AT THE SAME TIME PROVIDING FOR A PROCESS OF NEGOTIATION BY WHICH THIS RIGHT WILL BE DEFINED.

As we proceed to define these rights, it is important to ensure that we do not threaten the rights now recognized and affirmed in section 35 (1) of the Constitution.

ACCORDINGLY, ONTARIO PROPOSES THAT AN

APPROPRIATE NON-DEROGATION CLAUSE BE INCLUDED IN ANY CONSTITUTIONAL AMENDMENT RELATING TO SELF GOVERNMENT.

A POLITICAL AGREEMENT MAY ALSO BE NEEDED TO ESTABLISH A WORKABLE PROCESS TO BE FOLLOWED IN THE YEARS AHEAD.

BEFORE CONCLUDING, I WOULD ALSO LIKE TO MAKE A BRIEF COMMENT ON ONE OF THE OTHER AGENDA ITEMS BEFORE US, NAMELY, EQUALITY BETWEEN MALE AND FEMALE ABORIGINAL PEOPLE.

IN ADDRESSING THIS QUESTION, THE GOVERNMENT OF ONTARIO PROCEEDS FROM A COMMITMENT TO SEXUAL EQUALITY FOR ABORIGINAL MEN AND WOMEN.

I AM SURE THAT ALL OF US AROUND THIS TABLE

SHARE THIS COMMITMENT. HOWEVER, THERE IS SOME DEBATE AS

TO WHETHER EXISTING CONSTITUTIONAL PROVISIONS ADEQUATELY

ENSURE THAT THIS GOAL WILL BE MET.

IN VIEW OF THE DIFFERENT POSITIONS THAT HAVE
BEEN ADVANCED ON THE MATTER OF EQUALITY OF THE SEXES, WE
ARE WILLING TO BE FLEXIBLE IN TERMS OF HOW AND WHEN SUCH
EQUALITY IS ENSURED. HOWEVER, WE ARE NOT WILLING TO BE

FLEXIBLE ON THE PRINCIPLE ITSELF.

IN CLOSING MAY I EXPRESS THE HOPE THAT

GOVERNMENTS WILL RECOGNIZE THAT THE CONSTITUTIONAL

APPROACH SUPPORTED BY ONTARIO REPRESENTS A SENSITIVE AND

PRUDENT WAY FOR US TO TAKE THE NEXT STEP.

I AM CONFIDENT THAT THE ABORIGINAL GROUPS WILL SHOW AN UNDERSTANDING OF THE NEED TO REFLECT A BALANCE OF INTERESTS IN ANY AMENDMENTS AGREED UPON.

I AM CONFIDENT THAT, IF WE ARE FAIR, THE PEOPLE OF THIS COUNTRY WILL SUPPORT OUR ENDEAVOUR.

I CAN ASSURE YOU THAT ONTARIO WILL CONTINUE TO DO ITS PART TO BRING ABOUT PROGRESS ON THE ISSUES BEFORE US.



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Traduction du Secrétariat

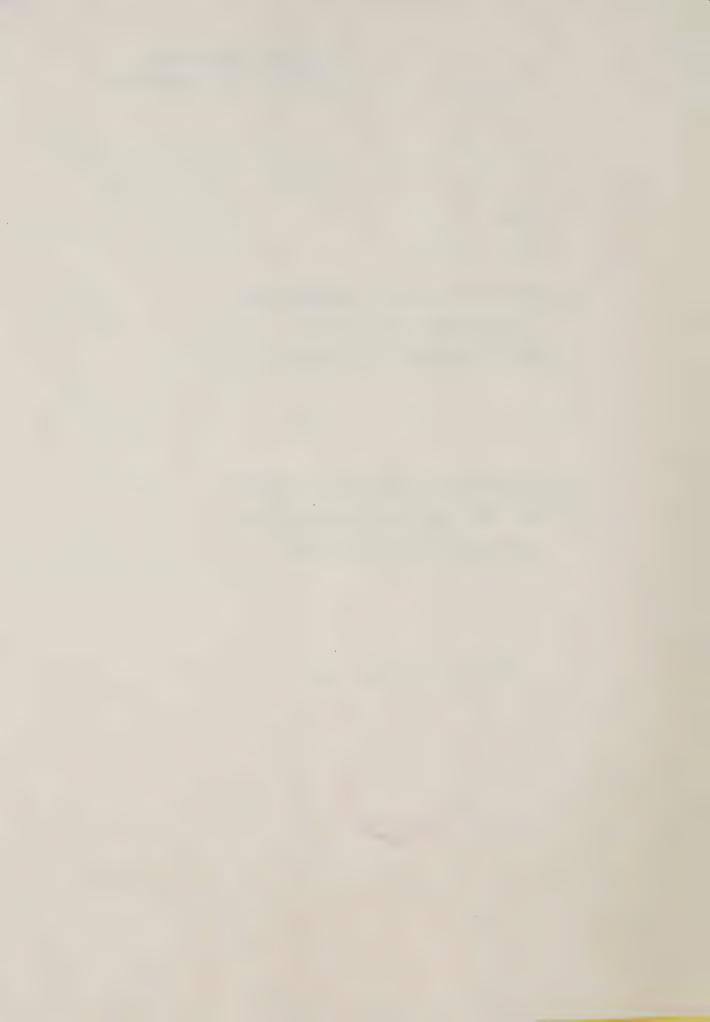
DECLARATION D'OUVERTURE PRONONCÉE PAR
L'HONORABLE FRANK MILLER,
PREMIER MINISTRE DE L'ONTARIO,

A

LA CONFERENCE DES PREMIERS MINISTRES
SUR LES QUESTIONS CONSTITUTIONNELLES
INTÉRESSANT LES AUTOCHTONES

OTTAWA, LE 2 AVRIL 1985





MONSIEUR LE PREMIER MINISTRE DU CANADA, MESSIEURS LES PREMIERS
MINISTRES DES PROVINCES ET CHEFS DES TERRITOIRES, MESSIEURS LES
DIRIGEANTS DES ORGANISMES AUTOCHTONES.

JE SUIS HEUREUX DE L'OCCASION QUI M'EST DONNÉE AUJOURD'HUT
DE PARTICIPER À UNE CONFERENCE CONSTITUTIONNELLE AUSSI
IMPORTANTE. COMME VOUS POUVEZ LE CONSTATER, LES CHANGEMENTS
SURVENUS EN ONTARIO ONT AMENÉ DE NOUVELLES FIGURES À LA FOIS AU
POSTE DE CHEF DU GOUVERNEMENT DE LA PROVINCE ET DANS LES RANGS
DES MINISTRES DE QUI RELEVENT DIRECTEMENT OU INDIRECTEMENT CES
QUESTIONS. JE TIENS CEPENDANT À VOUS ASSURER QUE LA VENUE DE CES
NOUVELLES FIGURES NE DOIT PAS ÊTRE INTERPRÉTÉE COMME UN
CHANGEMENT D'ORIENTATION DANS LA POSITION ADOPTÉE PAR L'ONTARIO
FACE AUX QUESTIONS QUI NOUS OCCUPENT.

MON GOUVERNEMENT S'EST ENGAGE À MAINTENIR L'ATTITUDE

CONSTRUCTIVE ADOPTEE PAR MON PREDECESSEUR, L'HONORABLE WILLIAM

DAVIS, ET LES MEMBRES DE SON CABINET.

NOUS ADMETTONS TOUS LE FAIT QUE LES PROBLÈMES DONT NOUS

AVONS ENTREPRIS L'EXAMEN SONT EXTRÊMEMENT COMPLEXES. NOUS

N'AVONS PAS ESSAYE DE MINIMISER NOS DIVERGENCES D'OPINIONS; ET

NOUS N'AVONS PAS NON PLUS NIE L'EXISTENCE DE CERTAINS FACTEURS

HISTORIQUES DONT IL FAUT TENIR COMPTE, DANS UNE CERTAINE MESURE.

COMME POUR TANT D'AUTRES RENCONTRES ORGANISÉES DANS CE
PAYS, NOUS DEVRONS FAIRE DES COMPROMIS ET FAIRE PREUVE D'UN
CERTAIN DEGRÉ DE SOUPLESSE POUR EN ARRIVER À DES RÉSULTATS
CONCLUANTS.

JE SAIS, PAR CONTRE, QUE LES OPINIONS SONT PARTAGEES SUR LES PROGRÈS DES DISCUSSIONS PROPREMENT DITES.

D'UNE PART, LES PEUPLES AUTOCHTONES ESTIMENT QUE NOS REALISATIONS JUSQU'À PRÉSENT SONT RESTREINTES.

D'AUTRE PART, LES GOUVERNEMENTS SENTENT LA NECESSITE DE MIEUX COMPRENDRE TOUTES LES CONSÉQUENCES PRATIQUES DES DROITS DES AUTOCHTONES.

MALGRÉ CES DIVERGENCES, JE CROIS QU'IL Y A DE VASTES

POSSIBILITES D'ENTENTE À LA PRESENTE CONFERENCE. JE SUIS

CONSCIENT DE LA NECESSITE DE FAIRE PORTER LES NEGOCIATIONS SUR

DES POINTS CONCRETS.

JE CROIS QUE NOTRE DÉCISION DE METTRE SURTOUT L'ACCENT SUR L'ARTICLE DU JOUR INTITULÉ "L'AUTONOMIE GOUVERNEMENTALE DES AUTOCHTONES" TRADUIT BIEN NOTRE VOLONTÉ D'AGIR EN CE SENS. NOUS AVONS ÉGALEMENT CONVENU QUE CETTE QUESTION DOIT FAIRE L'OBJET DE NÉGOCIATIONS TRIPARTITES AVEC CHACUN DES GROUPES AUTOCHTONES DE NOTRE PROVINCE.

DE PLUS, JE CROIS QUE NOUS ACCEPTONS TOUS LE FAIT QUE LES INSTITUTIONS GOUVERNEMENTALES DEVRONT NÉCESSAIREMENT ÊTRE CONÇUES EN FONCTION DE LA SITUATION PROPRE AUX DIFFÉRENTS PEUPLES AUTOCHTONES ET DEVRONT COMPLÉTER LES INSTITUTIONS GOUVERNEMENTALES NON AUTOCHTONES EN PLACE.

LA QUESTION QUI SE POSE VERITABLEMENT CONSISTE DONC À
DEFINIR LA PROCHAINE ETAPE QUI NOUS PERMETTRA DE MENER CES
NEGOCIATIONS ESSENTIELLES.

L'ONTARIO A CHOISI D'ABORDER LA QUESTION SOUS L'ANGLE CONSTITUTIONNEL.

CE CHOIX NOUS AMENE À RECONNAÎTRE LE DROIT DES AUTOCHTONES

À L'AUTONOMIE GOUVERNEMENTALE AU SEIN DE LA FEDERATION CANADIENNE

ET À LE METTRE EN APPLICATION, SEULEMENT AU MOYEN D'ENTENTES

NEGOCIEES ENTRE LE GOUVERNEMENT FEDERAL, LES PROVINCES OU LES

TERRITOIRES, ET LES PEUPLES AUTOCHTONES CONCERNÉS.

DE CETTE FAÇON, NOUS TEMOIGNERONS DE FAÇON SIGNIFICATIVE
QUE NOUS CROYONS À LA VALEUR UNIQUE DES CULTURES ET DES SOCIÉTES
AUTOCHTONES.

PAR LA MÊME OCCASION, NOUS RECONNAÎTRONS POUR DÉFINÎR
CES DROITS ADEQUATEMENT ET AVEC OUVERTURE D'ESPRIT, LA SEULE
SOLUTION RESIDE DANS LA NEGOCIATION AVEC LES GOUVERNEMENTS
TOUCHES.

POUR LE GRAND PUBLIC, CETTE APPROCHE TRADUIT CLAIREMENT
NOTRE DESIR DE RÉPONDRE AUX BESOINS DES AUTOCHTONES TOUT EN
RESPECTANT LES INTÉRÊTS DE TOUS LES RÉSIDENTS DU PAYS, DE SES
PROVINCES ET DE SES TERRITOIRES.

EN PROCEDANT AINSI, NOUS SIGNIFIERIONS À LA POPULATION

CANADIENNE QUE PEU IMPORTE L'ISSUE DES NÉGOCIATIONS, L'AUTONOMIE

POLITIQUE DES AUTOCHTONES DEVRA S'INSCRIRE À L'INTÉRIEUR DU

FÉDÉRALISME CANADIEN ET S'ADAPTER À NOS INSTITUTIONS.

EN SUBORDONNANT À LA CONCLUSION D'ACCORDS NEGOCIES TOUT
DROIT À L'AUTONOMIE POLITIQUE, NOUS METTONS EN PLACE DES
GARANTIES SUFFISANTES.

LA NEGOCIATION AUX NIVEAUX PROVINCIAL ET TERRITORIAL
ASSURE LE TYPE DE FLEXIBILITÉ ET D'OUVERTURE D'ESPRIT REQUISES
POUR REFLÉTER LA DIVERSITÉ DE LA CONDITION DE NOS PEUPLES
AUTOCHTONES.

C'EST POURQUOI L'ONTARIO FAVORISE LA RATIFICATION D'UN
ACCORD CONSTITUTIONNEL QUI RECONNAÎTRAIT OFFICIELLEMENT UN TEL
DROIT TOUT EN CREANT UN CADRE DE NEGOCIATION QUI NOUS PERMETTRAIT
DE DEFINIR CE DROIT.

AVANT DE CIRCONSCRIRE CES DROITS, IL FAUT NOUS ASSURER

QUE NOUS NE MENAÇONS PAS LES DROITS ACTUELLEMENT RECONNUS ET

CONFIRMES AU PARAGRAPHE 35(1) DE LA CONSTITUTION.

PAR CONSEQUENT, LE GOUVERNEMENT DE L'ONTARIO PROPOSE

QU'UNE CLAUSE SPECIALE DE NON-DEROGATION SOIT INSCRITE DANS TOUTE

MODIFICATION CONSTITUTIONNELLE SE RAPPORTANT AU PRINCIPE DE

L'AUTONOMIE POLITIQUE.

PAR AILLEURS, IL NOUS FAUDRA ÉVENTUELLEMENT CONCLURE UNE ENTENTE POLITIQUE POUR DELIMITER LA PROCEDURE À SUIVRE DANS LES ANNÉES À VENIR.

ENFIN, PERMETTEZ-MOI AUSSI DE FAIRE UN BREF COMMENTAIRE SUR UN AUTRE DES POINTS À L'ORDRE DU JOUR, SOIT L'EGALITÉ ENTRE LES HOMMES ET LES FEMMES AUTOCHTONES.

A L'EGARD DE CETTE QUESTION, LE GOUVERNEMENT DE L'ONTARIO SOUSCRIT AU PRINCIPE DE L'EGALITÉ SEXUELLE PARMI LES AUTOCHTONES. JE SUIS CONVAINCU QUE TOUS, AUTOUR DE CETTE TABLE, NOUS APPUYONS CE PRINCIPE. CEPENDANT, IL RESTE À DÉTERMINER SI LES DISPOSITIONS CONSTITUTIONNELLES ACTUELLES SUFFISENT À ASSURER LA RÉALISATION DE CET OBJECTIF.

COMPTE TENU DES DIFFÉRENTS POINTS DE VUE FORMULÉS SUR
LE DOSSIER DE L'EGALITÉ DES SEXES, NOUS SOMMES PRÊTS À FAIRE
PREUVE DE FLEXIBILITÉ QUANT À LA FAÇON ET AU MOMENT DE
CONCRÉTISER LE PRINCIPE DE L'EGALITÉ DES SEXES. NOTRE
FLEXIBILITÉ NE S'ETEND TOUTEFOIS PAS AU PRINCIPE LUI-MÊME.

EN GUISE DE CONCLUSION, JE SOUHAITE QUE LES
GOUVERNEMENTS ICI REPRÉSENTES RECONNATTRONT QUE L'APPROCHE
CONSTITUTIONNELLE MISE DE L'AVANT PAR L'ONTARIO PRÉSENTE POUR
NOUS UNE FAÇON PRUDENTE ET AVISÉE D'ENTREPRENDRE LA PROCHAINE
ETAPE.

J'AI BON ESPOIR QUE LES GROUPES AUTOCHTONES

COMPRENDRONT QUE TOUTE MODIFICATION APPORTÉE DEVRA RESPECTER

L'ÉQUILIBRE ENTRE LES INTÉRÊTS REPRÉSENTÉS.

J'AI BON ESPOIR QUE, SI NOUS SOMMES JUSTES, LA POPULATION DU PAYS NOUS APPUIERA.

JE PEUX CERTES VOUS ASSURER QUE L'ONTARIÓ CONTINUERA À FAIRE TOUT SON POSSIBLE POUR FAIRE PROGRESSER LES QUESTIONS DONT NOUS SOMMES SAISIS.



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FIRST MINISTERS' CONFERENCE
ON
ABORIGINAL CONSTITUTIONAL MATTERS

### THE CASE FOR INDIAN SELF-GOVERNMENT

ASSEMBLY OF FIRST NATIONS



OTTAWA, Ontario April 2 and 3, 1985





# National Indian Brotherhood

## **ASSEMBLY OF FIRST NATIONS**

47 CLARENCE STREET, SUITE 300, ATRIUM BUILDING OTTAWA ONTARIO K1N 9K1 (613) 236-0673 TELEX 053-3202

THE CASE FOR INDIAN SELF-GOVERNMENT

ASSEMBLY OF FIRST NATIONS

APRIL 2, 1985



#### INDIAN SELF-GOVERNMENT

As Indian First Nations we have an inherent right to govern ourselves.

We had this right from time immemorial (i.e. centuries before the arrival of the Europeans) and this right exists today.

Neither the Crown in right of the United Kingdom nor of Canada delegated the right to be self-governing to the First Nations. It existed long before Canada was itself a nation.

Parliament did not create our right to self-government.

The inherent right of North American Indians to sovereignty was first recognised by the Two-Row Wampum in 1650, and, later, by the Royal Proclamation of 1763 which speaks of, "The several Nations or Tribes of Indians with whom We are connected ..." and by subsequent treaties. The purpose of that Proclamation and the treaties was not to give rights to the First Nations but to give rights to the European settlers.

In the United States, the Supreme Court, in the case of Worcester v Georgia (1832), recognised Indian sovereignty. It declared,

"... The several Indian nations (are) distinct political communities, having territorial boundaries, within which their authority is exclusive, and have a right to all lands within those boundaries, which is not only acknowledged, but guaranteed by the United States ... Indian nations had always been considered as distinct, independent political communities, retaining their original rights, as the undisputed possessors of the soil from time immemorial ..."

This ruling applies persuasively in respect of the First Nations of Canada. Its premise remains the same in international and constitutional law.

Our First Nations' ability to continue to govern ourselves is a prime element of our existing sovereignty.

Long, long before European settlers arrived in what is now Canada, each First Nation had its own system of government and many had written constitutions. (Indeed, the Constitution of the United States itself was based upon the centuries-old Constitution of the Iroquois Confederacy.)

We have had our lands taken away and our authority suppressed by arbitrary actions of successive non-Indian governments over the past four hundred years; but our rights remain intact and can only be legally extinguished by our own consent.

We have the right to determine who our citizens are. This right is central to the existence of First Nations as distinct political communities.

This situation must be explicitly reflected in the Constitution of Canada if co-existence, and mutual respect, are to be meaningful. Anything less amounts to the perpetuation of colonialism or assimilation.

The Constitution of Canada must give effect to the principles and rights set forth in the International Bill of Rights to which Canada is Party if Canada is not to violate its obligations under international law.

In 1961, in the situation when India liberated Goa from Portuguese colonialism, the United Nations Security Council accepted the argument of India that colonialism does not give sovereignty to the coloniser. It must be remembered that no European colonial power really discovered Canada. This land had been already populated and occupied by the Indian First Nations. It must also be remembered that the Indian First Nations of Canada were never conquered by any European forces.

In contemporary international law, the International Bill of Rights declares that, "All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

The Assembly of First Nations calls upon Canada to honour that right, as a self-respecting Member of the United Nations and a supporter of the rule of law in international relations.

The point must also be made that, in seeking the explicit recognition of self-government, the First Nations do not advocate the dismemberment of the territorial integrity of Canada; rather, we envisage a sharing of this land and its resources, based on mutual respect and co-existence of jurisdictions, the details of which are susceptible to negotiations.

For the First Nations self-determination goes much beyond entitlement to practise our own cultures, traditional customs, religions and languages, or the right to determine the development of our own identity. Self-determination includes constitutionally-protected powers over our lives, our lands and our resources as well as the right to determine the nature of our on-going relationships with the federal and provincial governments within Canada.

Let us put this constitutional recognition of Indian self-government on a personal footing: would the Canadian people accept any system of government over which they have less influence than they now have? They would not. How then can anyone expect that the Indian peoples, with their historic traditions, and in this day of responsible governmental systems, should be satisfied with less?

The people's right to have their own assembly to pass laws for them, and the right of that assembly to control the actions of their own leaders and executive has existed in England since 1688.

Our rights to do the same thing existed in our societies even before that.

Canadians won those rights for themselves 118 years ago, but the First Nations of this land were left out of those constitutional arrangements. Today, we seek explicit constitutional recognition of our right to self-determination and we will be content with no less.

The federal Government has a responsibility of trust toward the First Nations that is sanctified in law and equity. That responsibility must be fulfilled; and the colonialist attitude of certain provincial governments must be ended.

CA1 Z 2 -C 52

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CONFÉRENCE DES PREMIERS MINISTRES
SUR LES
QUESTIONS CONSTITUTIONNELLES INTÉRESSANT LES AUTOCHTONES

#### LA QUESTION DE L'AUTONOMIE GOUVERNEMENTALE DES INDIENS

ASSEMBLÉE DES PREMIÈRES NATIONS



OTTAWA (Ontario) Les 2 et 3 avril 1985



### LA QUESTION DE L'AUTONOMIE GOUVERNEMENTALE DES INDIENS

### ASSEMBLÉE DES PREMIÈRES NATIONS

LE 2 AVRIL 1985



#### L'AUTONOMIE GOUVERNEMENTALE DES INDIENS

En tant que premières nations indiennes, nous avons un droit naturel à l'autonomie gouvernementale.

Nous avons ce droit depuis un temps immémorial (c'est-à-dire depuis des siècles avant la venue des Européens) et il existe toujours.

Ce n'est pas la Couronne, ni du chef du Royaume-Uni, ni du chef du Canada, qui a donné le droit à l'autonomie gouvernementale aux premières nations. Il existait bien avant que le Canada lui-même ne soit une nation.

Le Parlement n'a pas créé notre droit à l'autonomie gouvernementale.

Le droit naturel des Indiens d'Amérique du Nord à la souveraineté a été reconnu pour la première fois lors du Wampum de Two-Row, en 1650, et, plus tard, dans la Proclamation royale de 1763, où il est question des nations ou tribus indiennes avec lesquelles le gouvernement est en rapport, ainsi que dans plusieurs traités subséquents. Le but de la Proclamation et des traités n'était pas de donner des droits aux premières nations, mais d'en donner aux Européens.

Aux États-Unis, la Cour suprême, lors de l'affaire opposant Worcester v Georgie (en 1832), a reconnu la souveraineté des Indiens. Elle déclarait:

(traduction non officielle)
"... Les nations indiennes (sont) des entités politiques distinctes, qui ont des frontières territoriales dans les limites desquelles elles exercent une compétence exclusive, avec des droits sur toutes les terres contenues dans ces frontières, ce qui est non seulement reconnu, mais encore garanti par les États-Unis... Les nations indiennes ont toujours été considérées comme des entités politiques distinctes et indépendantes, et qui conservent leurs droits ancestraux en tant que possesseurs incontestés des terres depuis un temps immémorial..."

Cette décision s'applique indéniablement aux premières nations indiennes du Canada. Son fondement est identique en droit constitutionnel et en droit international. La possibilité, pour nos premières nations, de continuer à se gouverner elles-mêmes est un des éléments essentiels de notre souveraineté.

Longtemps, bien longtemps avant l'arrivée des premiers Européens dans ce qui est aujourd'hui le Canada, chaque première nation avait son propre système de gouvernement, et beaucoup avaient une constitution écrite. (De fait, la constitution des États-Unis fut inspirée de la constitution séculaire de la Confédération iroquoise.)

Au cours des quatre derniers siècles, nos terres nous ont été prises et nos pouvoirs supprimés par des mesures arbitraires de gouvernements non indiens successifs; mais nos droits sont restés inchangés et ne peuvent être légalement supprimés sans notre consentement.

Nous avons le droit de déterminer qui sont nos citoyens. Ce droit est essentiel à l'existence des premières nations en tant qu'entités politiques distinctes.

La Constitution du Canada doit expressément faire état de cette réalité, si l'on veut que les mots coexistence et respect mutuel aient un sens. Autrement, ce ne serait que perpétuation du colonialisme et de l'assimilation.

Le Canada doit consacrer dans sa Constitution les principes et les droits énoncés dans la Déclaration internationale des droits de l'homme, qu'il a lui-même signée, sinon il manquerait aux obligations que lui impose le droit international.

En 1961, lorsque l'Inde a libéré Goa du colonialisme portugais, le Conseil de sécurité des Nations Unies a accepté l'argument du gouvernement de l'Inde selon lequel le colonialisme ne donne pas de droit à la souveraineté au colonisateur. Il faut se rappeler qu'aucune puissance coloniale européenne n'a vraiment découvert le Canada. Cette terre était déjà peuplée et occupée par les premières nations indiennes. Il faut également se rappeler que les premières nations indiennes du Canada n'ont jamais été vaincues militairement par les Européens.

La Déclaration internationale des droits de l'homme, texte contemporain de droit international, fait état du droit de tous les peuples à l'auto-détermination. Du fait de ce droit, les peuples déterminent librement leur statut politique et s'occupent librement de leur développement économique, social et culturel.

L'Assemblée des premières nations demande au Canada de respecter ce droit, en qualité de membre des Nations Unies et de tenant du respect de la loi dans les relations internationales.

En cherchant à faire reconnaître explicitement son droit à l'autonomie gouvernementale, l'Assemblée des premières nations ne veut surtout pas miner l'intégrité du territoire canadien. Elle préconise plutôt un partage du pays et de ses ressources, fondé sur le respect mutuel et la coexistence des compétences respectives, les particularités desquelles pourront faire l'objet de négociations.

Pour les premières nations, l'autodétermination est bien plus que le droit à leurs us et coutumes, à leurs cultures, à leurs religions et à leurs langues, ou encore le droit d'affirmer leur identité. Elles voient dans l'autodétermination les pouvoirs, inscrits dans la Constitution, sur leurs vies, leurs terres et leurs ressources ainsi que le droit d'orienter leurs relations avec le gouvernement fédéral et les provinces.

Inversons les rôles, à titre d'exemple. Les Canadiens consentiraient-ils à un système politique qui leur accorderait moins d'influence qu'ils n'en possèdent maintenant. Il ne saurait en être question. Pourquoi donc les Indiens, avec toutes leurs traditions, à l'heure des gouvernements responsables, se contenteraient-ils de moins?

Le droit du peuple à sa propre assemblée législative et le pouvoir de cette assemblée sur ses dirigeants existent en Angleterre depuis 1688.

Ces droits existaient dans les sociétés des premières nations avant même cette année-là.

Voilà 118 ans, les Canadiens ont obtenu ces droits, mais les Indiens ont été exclus de l'entente constitutionnelle.

Aujourd'hui, nous demandons que notre droit à l'autodétermination figure dans la Constitution et rien de moins ne nous satisfera.

De par la loi et de par l'équité, le gouvernement fédéral a une obligation envers le premières nations. Il doit remplir cette obligation et l'attitude colonialiste de certaines provinces doit cesser.



FIRST MINISTERS' CONFERENCE
ON
ABORIGINAL CONSTITUTIONAL MATTERS

CONFÉRENCE DES PREMIERS MINISTRES
SUR LES QUESTIONS CONSTITUTIONNELLES
INTÉRESSANT LES AUTOCHTONES



PROPOSED EQUALITY RIGHTS AMENDMENTS

CURRENTLY UNDER CONSIDERATION

PROPOSITIONS DE MODIFICATION

EVENTUELLE DES DROITS A L'EGALITE

Federal

Fédéral

OTTAWA, Ontario April 2 and 3, 1985 OTTAWA (Ontario) Les 2 et 3 avril 1985



# PROPOSED EQUALITY RIGHTS AMENDMENTS CURRENTLY UNDER CONSIDERATION PROPOSITIONS DE MODIFICATION ÉVENTUELLE DES DROITS À L'ÉGALITÉ

Proposed subsection 25(2) (Federal Proposal - 1984 FMC)

## Rights of equality of both sexes

"(2) Nothing in this section abrogates or derogates from the guarantees of equality with respect to male and female persons under section 28 of this Charter."

Proposed subsection 25(2)
(AFN Draft - January, 1985)

"(2) Notwithstanding anything in this Charter, all rights and all freedoms of the aboriginal peoples of Canada are guaranteed equally to male and female aboriginal persons."

Proposed section 28 (ICNI Draft - March, 1985)

# Rights guaranteed equally to both sexes

"28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it, including the rights and freedoms referred to in section 25, are guaranteed equally to male and female persons."

Projet de modification du paragraphe 25(2) (Proposition fédérale - CPM 1984)

# Égalité des droits pour les deux sexes

"(2) Le présent article n'a pas pour effet de porter atteinte aux garanties d'égalité prévues pour les personnes des deux sexes par l'article 28 de la présente charte."

Projet de modification du paragraphe 25(2) (Proposition de l'APN - janvier 1985)

(2) Indépendamment des autres dispositions de la présente charte, tous les droits et toutes les libertés des peuples autochtones du Canada sont garantis également aux autochtones des deux sexes."

Projet d'article 28 (Proposition du CIAN - mars 1985)

# Garantie d'égalité des droits des deux sexes

"28. Indépendamment des autres dispositions de la présente charte, les droits et libertés qui y sont mentionnés, y compris les droits et libertés visés à l'article 25, sont garantis également aux personnes des deux sexes."

Proposed subsection 35(4)
(Best Efforts Draft
- 1984 FMC)

Rights and freedoms to apply equally to both sexes

"(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons, and this guarantee of equality applies in respect of all other rights, and all freedoms, of the aboriginal peoples of Canada."

Proposed subsection 35(4)
(Northwest Territories
Draft of March 21, 1985)

"(4) Notwithstanding any other provision of this Act, all rights and all freedoms of the aboriginal peoples of Canada and the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons."

Proposed subsections 35(5) and (6)

(Nova Scotia Draft - March 11-12, 1985)

"(5) Notwithstanding any other provision in this Act, an aboriginal person is guaranteed equality before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on ancestry, color, religion, sex, age, mental or physical disability.

Projet de modification du paragraphe 35(4)
(Proposition émanant de la CPM de mars 1984)

Egalité d'application des droits et libertés aux deux sexes

"(4) Indépendamment de toute autre disposition de la présente loi, les droits -- ancestraux ou issus de traités -- visés au paragraphe (1) sont garantis également aux personnes des deux sexes et cette garantie d'égalité s'applique à tous les autres droits et à toutes les libertés des peuples autochtones du Canada."

Projet de paragraphe 35(4) (Proposition des Territoires du Nord-Ouest datée du 21 mars 1985)

"(4) Indépendamment de toute autre disposition de la présente loi, tous les droits et toutes les libertés des peuples autochtones du Canada et les droits -- ancestraux ou issus de traités -- visés au paragraphe (1) sont garantis également aux personnes des deux sexes."

Projet de paragraphes 35(5) et (6)
(Proposition de la Nouvelle-Écosse datée des 11 et 12 mars 1985)

"(5) Nonobstant toute autre disposition de la présente loi, la loi garantit l'égalité à tous les autochtones qui ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur l'origine ancestrale, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.

- (6) Subsection (5) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of aboriginal ancestry, color, religion, sex, age, mental or physical disability."
- (6) Le paragraphe (5) n'a pas pour effet d'interdire les lois, programmes ou activités destinées à améliorer la situation d'individus ou de groupes défavorisés, notamment du fait de leur origine ancestrale, de leur couleur, de leur religion, de leur sexe, de leur âge ou de leurs déficiences mentales ou physiques."



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FIRST MINISTERS' CONFERENCE
ON
ABORIGINAL CONSTITUTIONAL MATTERS

CONFÉRENCE DES PREMIERS MINISTRES
SUR LES QUESTIONS CONSTITUTIONNELLES
INTÉRESSANT LES AUTOCHTONES

# PROPOSED EQUALITY RIGHTS AMENDMENTS CURRENTLY UNDER CONSIDERATION

PROPOSITIONS DE MODIFICATION
EVENTUELLE DES DROITS A L'EGALITE

Federal

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OTTAWA, Ontario April 2 and 3, 1985 OTTAWA (Ontario) Les 2 et 3 avril 1985



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- (6) Le paragraphe (5) n'a pas pour effet d'interdire les lois, programmes ou activités destinées à améliorer la situation d'individus ou de groupes défavorisés, notamment du fait de leur origine ancestrale, de leur couleur, de leur religion, de leur sexe, de leur âge ou de leurs déficiences mentales ou physiques."



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FIRST MINISTERS' CONFERENCE
ON
ABORIGINAL CONSTITUTIONAL MATTERS

### AGENDA ITEM 1:

#### SELF-GOVERNMENT FOR THE ABORIGINAL PEOPLES

LEAD STATEMENT

Federal





#### AGENDA ITEM 1: SELF-GOVERNMENT FOR THE ABORIGINAL PEOPLES

#### LEAD STATEMENT

- O THE FIRST ITEM ON OUR AGENDA IS SELF-GOVERNMENT.

  WE CAN ALL AGREE THAT THIS ITEM IS THE KEY TO A

  SUCCESSFUL CONFERENCE AND TO THE DISCUSSION AND

  NEGOTIATION OF THE OTHER ISSUES THAT LIE BEFORE

  US.
- O IT IS CLEAR THAT ONLY IF ABORIGINAL PEOPLES ASSUME MORE RESPONSIBILITY OVER THEIR OWN AFFAIRS WILL THEY BE FREED OF THE BURDEN OF DEPENDENCY IMPOSED UPON INDIANS BY THE INDIAN ACT OR IMPOSED ON INUIT AND MÉTIS BY POLICIES ROOTED IN INDIAN ACT ATTITUDES.
- O THAT IS WHY THE FEDERAL GOVERNMENT AGREES WITH THE PROPOSITION THAT WITHOUT CONSTITUTIONAL PROTECTION OF RIGHTS OF ABORIGINAL PEOPLES, THERE CANNOT BE A LASTING RELATIONSHIP OF TRUST BETWEEN CANADA'S ABORIGINAL PEOPLES AND GOVERNMENTS.
- O THAT IS WHY THE NEW FEDERAL GOVERNMENT IS

  COMMITTED TO SECURING AGREEMENT WITH THE

  PROVINCIAL GOVERNMENTS AND WITH THE PARTICIPATION

  OF THE ABORIGINAL LEADERS, ON AN APPROPRIATE

  CONSTITUTIONAL AMENDMENT RELATING TO

  SELF-GOVERNMENT.
- O ACCORDINGLY, IT APPEARS TO ME THAT THE REAL
  QUESTION IS HOW TO BLEND THE DESIRE OF THE
  ABORIGINAL PEOPLES FOR CONSTITUTIONAL ENTRENCHMENT
  OF THE RIGHT TO SELF-GOVERNMENT WITH THE DESIRE OF
  GOVERNMENTS FOR SUFFICIENT DEFINITION OF THOSE
  RIGHTS. I BELIEVE THAT ONCE WE BEGIN TO LOOK AT
  CONCRETE OPTIONS, THERE IS MUCH COMMON GROUND.

- O IN DECEMBER OF LAST YEAR, MR. CROSBIE TABLED A
  DRAFT PROPOSAL FOR THE CONSTITUTIONAL RECOGNITION
  OF THE RIGHT TO SELF-GOVERNMENT.
- O THE PROPOSAL STIPULATED THAT THE DEFINITION OF
  THAT RIGHT SHOULD BE CONTAINED IN AGREEMENTS TO BE
  NEGOTIATED BETWEEN GOVERNMENTS AND ABORIGINAL
  GROUPS.
- O SINCE THEN, A FURTHER MINISTERS' MEETING AND SEVERAL OFFICIALS' MEETINGS WERE HELD AT WHICH THIS PROPOSAL AND OTHERS WERE DISCUSSED.
- O I UNDERSTAND THAT THESE DELIBERATIONS WERE
  PRODUCTIVE AND THAT ALL PARTICIPANTS HAVE WORKED
  HARD AND IN GOOD FAITH.
- ON THE BASIS OF THESE DISCUSSIONS, THE FEDERAL GOVERNMENT HAS PREPARED A DRAFT ACCORD WHICH WAS DISTRIBUTED TO YOU YESTERDAY.
- O THE DRAFT CONTAINS A POSSIBLE APPROACH TO A CONSTITUTIONAL AMENDMENT RELATING TO SELF-GOVERNMENT FOR ABORIGINAL PEOPLES.
- O THE FIRST ELEMENT OF THIS APPROACH IS THE
  RECOGNITION OF THE RIGHTS OF THE ABORIGINAL
  PEOPLES TO SELF-GOVERNMENT, WITHIN THE CANADIAN
  FEDERATION, WHICH WOULD BE SET OUT IN NEGOTIATED
  AGREEMENTS.
- THE SECOND ELEMENT IS THE COMMITMENT OF THE FEDERAL AND PROVINCIAL GOVERNMENTS TO ENTER INTO NEGOTIATIONS WITH THE REPRESENTATIVES OF ABORIGINAL PEOPLE AIMED AT CONCLUDING THESE AGREEMENTS RESPECTING SELF-GOVERNMENT.
- O THIRD, THE AMENDMENT PROVIDES THAT THE RIGHTS OF
  THE ABORIGINAL PEOPLES CONTAINED IN THESE
  AGREEMENTS WOULD RECEIVE CONSTITUTIONAL PROTECTION
  IF THE PARTIES AGREE.

- O YOU WILL NOTE IN THIS LATTER REGARD THAT THE DRAFT SECTION 35.02 PROVIDES THAT BOTH PARLIAMENT AND THE PROVINCIAL LEGISLATURES CONCERNED MUST CONSENT PRIOR TO ANY AGREEMENT BEING GIVEN CONSTITUTIONAL PROTECTION.
- O THE POLITICAL ACCORD WHICH ACCOMPANIES THIS
  PROPOSAL ELABORATES UPON THE FRAMEWORK WITHIN
  WHICH THE NEGOTIATIONS WILL TAKE PLACE, INCLUDING
  A LIST OF OBJECTIVES AND RELEVANT FACTORS TO BE
  CONSIDERED. THOSE PROVISIONS OF THE ACCORD WHICH
  RELATE TO CONSTITUTIONAL AMENDMENTS HAVE BEEN
  HIGHLIGHTED IN SQUARE BRACKETS.
- O I SHOULD EMPHASIZE THAT WHAT WE ARE SEEKING IS A
  RESULT -- AN AGREEMENT ON CONSTITUTIONAL PROVISION
  FOR THE SELF-GOVERNMENT RIGHTS OF ABORIGINAL
  PEOPLES.
- O THE CONSTITUTIONAL AMENDMENT OPTION WHICH WE HAVE
  PUT FORWARD IS OUR ATTEMPT TO CAPTURE THE
  DIFFERENT VIEWS OF THE PARTIES AND SYNTHESIZE THEM
  INTO SOMETHING WHICH MIGHT BE ACCEPTABLE TO ALL.
- O THE WORDING OF THESE DRAFT PROVISIONS IS BY NO MEANS FIXED IN STONE AS FAR AS I AM CONCERNED. IF PARTICIPANTS HAVE CONCERNS WITH THE WAY IN WHICH THESE CONCEPTS ARE EXPRESSED, I ENCOURAGE THEM TO COME FORWARD WITH THEIR SUGGESTIONS FOR IMPROVEMENT, BEARING IN MIND OUR OBJECTIVE OF REACHING AGREEMENT.
- O THE FEDERAL GOVERNMENT BELIEVES THAT A

  CONSTITUTIONAL AMENDMENT RECOGNIZING THE RIGHT TO

  SELF-GOVERNMENT FOR THE ABORIGINAL PEOPLES,

  SET OUT IN NEGOTIATED AGREEMENTS, WILL LEAD TO A

  MEASURED APPROACH AND PAVE THE WAY TO PRACTICAL,

  COMMUNITY OR REGIONAL LEVEL DISCUSSIONS.

- O GOVERNMENTS SHOULD ALSO RECOGNIZE THAT THE
  SUBSTANCE OF THESE DISCUSSIONS WILL VARY BY
  PROVINCE, BY REGION, BY LOCAL CIRCUMSTANCE AND BY
  THE PARTICULAR NEEDS AND ASPIRATIONS OF EACH
  ABORIGINAL COMMUNITY.
- O BOTH GOVERNMENTS AND ABORIGINAL LEADERS WILL HAVE

  TO REALIZE THAT THE MOVE TOWARD SELF-GOVERNMENT

  SIGNIFIES A LONG-TERM COMMITMENT BY ALL PARTIES:
  - SELF-GOVERNMENT CANNOT HAPPEN OVER NIGHT
    BECAUSE ALL GOVERNMENTS FACE CONSTRAINTS
    IMPOSED BY THE CURRENT ECONOMIC ENVIRONMENT;
  - SELF-GOVERNMENT SHOULD HAPPEN OVER TIME
    BECAUSE THE COMPLEXITY OF THIS ENDEAVOUR
    DEMANDS THAT ALL PARTICIPANTS MOVE FORWARD AT
    A DELIBERATE AND MEASURED PACE TO ASSURE THE
    BEST POSSIBLE OUTCOME.
- BUT IF WE PRESS ON TODAY, SIGNIFICANT, TANGIBLE
  BENEFITS WILL RESULT. SELF-GOVERNMENT WILL MEAN
  ABORIGINAL PEOPLES TAKING RESPONSIBILITY FOR THEIR
  OWN DECISIONS RATHER THAN HAVING DECISIONS MADE
  FOR THEM. IT WILL MEAN SELF-RELIANCE RATHER THAN
  DEPENDENCE. IT WILL MEAN ABORIGINAL PRIDE AND A
  SENSE OF SELF-WORTH.
- O I BELIEVE THAT IF GOVERNMENTS IN CANADA ARE
  WILLING TO TAKE THIS STEP IN RECOGNIZING THE RIGHT
  TO SELF-GOVERNMENT IN THE CONSTITUTION, IT WILL DO
  MUCH TO NURTURE THE CREATIVE ENERGIES OF
  ABORIGINAL PEOPLES AND TO ENSURE THEIR FULL
  PARTICIPATION IN CANADIAN SOCIETY.
- O I WOULD NOW INVITE COMMENTS FROM PARTICIPANTS ON THE SELF-GOVERNMENT PROVISIONS OF THE DRAFT ACCORD AND RELATED SCHEDULE WHICH YOU HAVE BEFORE YOU.

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CONFÉRENCE DES PREMIERS MINISTRES
SUR LES QUESTIONS CONSTITUTIONNELLES
INTÉRESSANT LES AUTOCHTONES

## POINT # 1:

## AUTONOMIE GOUVERNEMENTALE DES AUTOCHTONES

ENTREE EN MATIERE

Fédéral





# POINT # 1: AUTONOMIE GOUVERNEMENTALE DES AUTOCHTONES

## ENTRÉE EN MATIÈRE

- O LE PREMIER POINT INSCRIT À L'ORDRE DU JOUR DE NOTRE CONFÉRENCE EST L'AUTONOMIE GOUVERNEMENTALE DES AUTOCHTONES. VOUS CONVIENDREZ AVEC MOI QUE LE SUCCÈS DE CETTE CONFÉRENCE, AINSI QUE DES DISCUSSIONS ET NÉGOCIATIONS QUE NOUS AURONS SUR D'AUTRES SUJETS, DÉPEND DE NOTRE CAPACITÉ À PARVENIR À UN ACCORD SUR CETTE IMPORTANTE OUESTION.
- O DE TOUTE ÉVIDENCE, CE N'EST QUE DANS LA MESURE OÙ
  LES AUTOCHTONES AURONT UN PLUS GRAND RÔLE À JOUER
  DANS L'ADMINISTRATION DE LEURS AFFAIRES QU'ILS
  POURRONT S'AFFRANCHIR DE L'ÉTAT DE DÉPENDANCE DANS
  LEQUEL LES TIENT LA LOI SUR LES INDIENS OU DES
  POLITIQUES SEMBLABLES.
- O C'EST POURQUOI LE GOUVERNEMENT ADHÈRE AU PRINCIPE
  VOULANT QUE SEULE LA GARANTIE CONSTITUTIONNELLE
  DES DROITS DES AUTOCHTONES DU CANADA PEUT SUSCITER
  CHEZ CES DERNIERS UN SENTIMENT DURABLE DE
  CONFIANCE À L'ÉGARD DES GOUVERNEMENTS.
- O C'EST POUR LES MÊMES RAISONS QUE LE GOUVERNEMENT FÉDÉRAL S'EST ENGAGÉ À OBTENIR L'APPUI DES PROVINCES, DE CONCERT AVEC LES CHEFS AUTOCHTONES, SUR LA MODIFICATION À APPORTER À LA CONSTITUTION EN CE QUI CONCERNE L'AUTONOMIE GOUVERNEMENTALE DES AUTOCHTONES.
- O LA VÉRITABLE QUESTION, SELON MOI, EST DE SAVOIR
  COMMENT CONCILIER LE DÉSIR DES AUTOCHTONES
  D'OBTENIR LA RECONNAISSANCE CONSTITUTIONNELLE DE
  LEUR DROIT À L'AUTONOMIE GOUVERNEMENTALE AVEC
  CELUI DES GOUVERNEMENTS D'OBTENIR UNE DÉFINITION

SUFFISAMMENT PRÉCISE DE CE DROIT. J'ESTIME QUE DÈS QUE NOUS COMMENCERONS À ÉTUDIER DES OPTIONS CONCRÈTES, NOUS CONSTATERONS QUE NOS POSITIONS NE SONT PAS IRRÉCONCILIABLES.

- O EN DÉCEMBRE DERNIER, M. CROSBIE DÉPOSAIT UN PROJET
  DE MODIFICATION RECOMMANDANT L'INSCRIPTION DANS LA
  CONSTITUTION DU DROIT DES AUTOCHTONES À
  L'AUTONOMIE GOUVERNEMENTALE.
- O CETTE PROPOSITION PRÉVOYAIT LA DÉFINITION DE CE DROIT DANS DES ENTENTES QUE LES GOUVERNEMENTS DEVRAIENT NÉGOCIER AVEC LES GROUPES AUTOCHTONES.
- O DEPUIS, LES MINISTRES ET LES FONCTIONNAIRES SE SONT RÉUNIS DE NOUVEAU, CES DERNIERS À PLUSIEURS REPRISES, POUR DISCUTER, ENTRE AUTRES, DE CETTE PROPOSITION.
- o J'AI SU QUE CES RENCONTRES AVAIENT ÉTÉ PRODUCTIVES ET QUE LES PARTICIPANTS AVAIENT TRAVAILLÉ AVEC ARDEUR ET BONNE VOLONTÉ.
- O C'EST À PARTIR DES RÉSULTATS DE CES DISCUSSIONS QUE LE GOUVERNEMENT FÉDÉRAL A RÉDIGÉ LE PROJET D'ACCORD QUI VOUS A ÉTÉ DISTRIBUÉ HIER.
- O CE PROJET PROPOSE UNE FAÇON DE MODIFIER LA CONSTITUTION EN FAVEUR DE L'AUTONOMIE GOUVERNEMENTALE DES AUTOCHTONES.
- L'APPROCHE PRÉCONISÉE PRÉVOIT D'ABORD LA
  RECONNAISSANCE DES DROITS DES PEUPLES AUTOCHTONES
  À L'AUTONOMIE GOUVERNEMENTALE AU SEIN DE LA
  FÉDÉRATION CANADIENNE, SOUS RÉSERVE DE LA
  DÉFINITION DE CES DROITS DANS DES ENTENTES
  NÉGOCIÉES.
- O DEUXIÈMEMENT, LE GOUVERNEMENT FÉDÉRAL ET LES PROVINCES SERAIENT TENUS D'ENGAGER DES NÉGOCIATIONS AVEC LES REPRÉSENTANTS DES AUTOCHTONES EN VUE DE CONCLURE AVEC EUX DES ENTENTES RELATIVES À LEUR AUTONOMIE GOUVERNEMENTALE.

- O TROISIÈMEMENT, LES DROITS RECONNUS DANS CES ENTENTES SERAIENT GARANTIS PAR LA CONSTITUTION SI LES PARTIES EN CAUSE Y CONSENTAIENT.
- O VOUS VOUDREZ BIEN NOTER QU'À CET ÉGARD, LE PROJET D'ARTICLE 35.02 PRÉVOIT QUE LE PARLEMENT ET LES LÉGISLATURES PROVINCIALES CONCERNÉES DOIVENT DONNER LEUR CONSENTEMENT À LA RECONNAISSANCE CONSTITUTIONNELLE D'UNE ENTENTE QUELLE QU'ELLE SOIT.
- O L'ACCORD POLITIQUE QUI ACCOMPAGNE CETTE

  PROPOSITION TRAITE PLUS EN DÉTAIL DU CADRE DANS

  LEQUEL LES NÉGOCIATIONS DEVRAIENT SE DÉROULER ET

  FOURNIT, ENTRE AUTRES, UNE LISTE D'OBJECTIFS ET DE

  FACTEURS À CONSIDÉRER. LES DISPOSITIONS DE

  L'ACCORD QUI PORTENT SUR LES MODIFICATIONS

  CONSTITUTIONNELLES PROPOSÉES SONT INDIQUÉES ENTRE

  CROCHETS.
- O J'AIMERAIS VOUS RAPPELER QUE SEUL LE RÉSULTAT

  COMPTE, C'EST-À-DIRE ARRIVER À UNE ENTENTE SUR LA

  MODIFICATION À APPORTER À LA CONSTITUTION

  CONCERNANT L'AUTONOMIE GOUVERNEMENTALE DES

  AUTOCHTONES.
- O LA SOLUTION QUE NOUS VOUS SOUMETTONS RÉSULTE DES EFFORTS QUE NOUS AVONS DÉPLOYÉS EN VUE DE FONDRE LES DIFFÉRENTES POSITIONS DES PARTICIPANTS EN UNE PROPOSITION QUI LEUR SEMBLE ACCEPTABLE.
  - O DANS MON ESPRIT, AUCUNE FORMULATION N'EST

    IMMUABLE. SI LES PARTICIPANTS ONT QUELQUE

    OBJECTION, JE LES ENCOURAGE À NOUS FAIRE PART DES

    AMÉLIORATIONS QUI LEUR SEMBLERAIENT SOUHAITABLES,

    COMPTE TENU DE L'OBJECTIF QUE NOUS NOUS SOMMES

    FIXÉ D'ARRIVER À UNE ENTENTE.
  - O LE GOUVERNEMENT FÉDÉRAL EST D'AVIS QUE LA
    RECONNAISSANCE CONSTITUTIONNELLE DU DROIT DES
    AUTOCHTONES À L'AUTONOMIE GOUVERNEMENTALE, SOUS
    RÉSERVE DE LA DÉFINITION DE CE DROIT DANS DES

ENTENTES NÉGOCIÉES, CONDUIRA À L'ADOPTION D'UNE APPROCHE PLUS MESURÉE ET FACILITERA LA TENUE DE DISCUSSIONS PRATIQUES AU NIVEAU DES COLLECTIVITÉS OU DES RÉGIONS.

- O LES GOUVERNEMENTS DEVRONT RECONNAÎTRE QUE LA
  TENEUR DES DISCUSSIONS VARIERA SELON LA PROVINCE,
  LA RÉGION, LA LOCALITÉ AINSI QUE LES BESOINS ET
  LES ASPIRATIONS DES DIFFÉRENTES COLLECTIVITÉS
  AUTOCHTONES.
- O LES GOUVERNEMENTS ET LES CHEFS AUTOCHTONES DEVRONT PRENDRE CONSCIENCE DE L'ENGAGEMENT À LONG TERME QU'ILS SERONT APPELÉS À PRENDRE:
  - L'ACCESSION À L'AUTONOMIE GOUVERNEMENTALE NE PEUT S'OPÉRER DU JOUR AU LENDEMAIN DU FAIT DES RESTRICTIONS QUE LA SITUATION ÉCONOMIQUE ACTUELLE IMPOSE À TOUS LES GOUVERNEMENTS;
  - CETTE AUTONOMIE NE PEUT S'ACQUÉRIR QUE GRADUELLEMENT, VU LA PRUDENCE DONT LES PARTIES EN CAUSE DEVRONT NÉCESSAIREMENT FAIRE PREUVE EN RAISON DE LA COMPLEXITÉ MÊME D'UNE PAREILLE ENTREPRISE.
- O MAIS SI NOUS FAISONS DES PROGRÈS AUJOURD'HUI, DES AVANTAGES CONCRETS EN RÉSULTERONT. L'AUTONOMIE GOUVERNEMENTALE AMÈNERA LES AUTOCHTONES À PRENDRE EUX-MÊMES LES DÉCISIONS QUI LES CONCERNENT AU LIEU DE LAISSER D'AUTRES S'EN CHARGER. ILS EN RETIRERONT UN SENTIMENT D'AUTODÉTERMINATION PLUTÔT QUE DE DÉPENDANCE, UN SENTIMENT DE FIERTÉ ET D'AFFIRMATION DE LEUR VALEUR.
- O SI LES GOUVERNEMENTS SONT DISPOSÉS À FRANCHIR
  L'ÉTAPE DE LA RECONNAISSANCE CONSTITUTIONNELLE DE
  L'AUTONOMIE GOUVERNEMENTALE DES AUTOCHTONES, JE
  CROIS QU'ILS CONTRIBUERONT GRANDEMENT À STIMULER
  L'ÉNERGIE CRÉATRICE DE CES DERNIERS ET À GARANTIR
  LEUR PARTICIPATION LIBRE ET ENTIÈRE À
  L'ÉPANOUISSEMENT DE LA SOCIÉTÉ CANADIENNE.

O J'INVITÈRAIS MAINTENANT LES PARTICIPANTS À FAIRE CONNAÎTRE LEURS VUES SUR CETTE PROPOSITION DU GOUVERNEMENT FÉDÉRAL.



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FIRST MINISTERS' CONFERENCE
ON
ABORIGINAL CONSTITUTIONAL MATTERS

AGENDA ITEM 2:

SEXUAL EQUALITY RIGHTS

LEAD STATEMENT

Federal



#### AGENDA ITEM 2: SEXUAL EQUALITY RIGHTS

#### LEAD STATEMENT

- O THE FEDERAL GOVERNMENT SUPPORTS THE PRINCIPLE OF EQUALITY BETWEEN ABORIGINAL MEN AND WOMEN.
- OUR COMMITMENT TO THIS PRINCIPLE IS LONGSTANDING AND ONE WHICH WE INTEND TO HONOUR, BOTH IN THE SPIRIT AND THE LETTER OF THE LAW.
- O I UNDERSTAND THAT DURING THE PROCESS LEADING TO
  THE 1984 FIRST MINISTERS' CONFERENCE AND DURING
  THE PREPARATIONS FOR THIS CONFERENCE, FAIRLY
  DETAILED DISCUSSIONS TOOK PLACE ON THE ADEQUACY OF
  PRESENT CONSTITUTIONAL PROVISIONS RELATING TO
  EQUALITY RIGHTS FOR ABORIGINAL MEN AND WOMEN.
- O MR. CROSBIE INFORMS ME THAT AT THE RECENT
  MINISTERS' MEETING, PREMIER HATFIELD SPOKE
  STRONGLY IN FAVOUR OF ADOPTING A CLARIFYING
  AMENDMENT AT THIS CONFERENCE AND WAS SUPPORTED IN
  THIS REGARD BY SEVERAL OTHER PARTICIPANTS.
- O I HOPE THAT WE CAN RESOLVE THIS ISSUE TODAY TO
  EVERYONE'S SATISFACTION AND ALLAY ONCE AND FOR ALL
  ANY APPREHENSION OR CONFUSION WHICH MAY EXIST ON
  THIS SUBJECT.
- O I SHOULD EMPHASIZE, HOWEVER, THAT THE AIM OF A
  CLARIFYING AMENDMENT SHOULD BE TO STRENGTHEN THE
  SEXUAL EQUALITY PROVISIONS WHERE A WEAKNESS IS
  PERCEIVED TO EXIST. I AM NOT PREPARED TO SUPPORT
  AN AMENDMENT WHICH DIRECTLY OR INDIRECTLY ACHIEVES
  SOME OTHER PURPOSE.

- O PERHAPS WE COULD NOW DETERMINE WHETHER THERE IS SUFFICIENT AGREEMENT FOR US TO PROCEED WITH A CLARIFYING AMENDMENT.
- O I HAVE TABLED SEVERAL DIFFERENT POSSIBLE
  FORMULATIONS WHICH HAVE BEEN RAISED AT DIFFERENT
  STAGES OF THE PROCESS TO ASSIST US IN OUR
  DELIBERATIONS.

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CONFÉRENCE DES PREMIERS MINISTRES SUR LES QUESTIONS CONSTITUTIONNELLES INTÉRESSANT LES AUTOCHTONES

### POINT # 2:

## DROITS RELATIFS A L'EGALITE DES SEXES

Fédéral





### POINT # 2: DROITS RELATIFS À L'ÉGALITÉ DES SEXES

## ENTRÉE EN MATIÈRE

- O LE GOUVERNEMENT FÉDÉRAL SOUSCRIT AU PRINCIPE DE L'ÉGALITÉ ENTRE LES HOMMES ET LES FEMMES AUTOCHTONES.
- O NOTRE ENGAGEMENT À L'ÉGARD DE CE PRINCIPE EXISTE

  DE LONGUE DATE, ET NOUS COMPTONS LE RESPECTER DANS

  L'ESPRIT AUSSI BIEN QUE DANS LA LETTRE DE LA LOI.
- O TOUT COMME POUR LA CONFÉRENCE DES PREMIERS
  MINISTRES DE 1984, LES PARTICIPANTS AUX RÉUNIONS
  PRÉPARATOIRES À LA CONFÉRENCE DE CETTE ANNÉE SE
  SONT PENCHÉS DE PRÈS SUR LA PERTINENCE DES
  DISPOSITIONS ACTUELLES DE LA CONSTITUTION EN CE
  QUI A TRAIT À L'ÉGALITÉ DES DROITS DES HOMMES ET
  DES FEMMES AUTOCHTONES.
- O M. CROSBIE M'INFORME QU'À LA DERNIÈRE RÉUNION DE MINISTRES, LE PREMIER MINISTRE HATFIELD A VIVEMENT PRÉCONISÉ L'ADOPTION À CETTE CONFÉRENCE D'UNE MODIFICATION VISANT À CLARIFIER LES DISPOSITIONS ACTUELLES DE LA CONSTITUTION À CET ÉGARD, ET QU'IL A REÇU L'APPUI DE PLUSIEURS AUTRES PARTICIPANTS.
- O J'ESPÈRE QUE NOUS POURRONS AUJOURD'HUI RÉGLER
  CETTE QUESTION À LA SATISFACTION DE TOUS ET
  ÉLIMINER UNE FOIS POUR TOUTE LES APPRÉHENSIONS ET
  LA CONFUSION QUI PEUVENT EXISTER À CE SUJET.
- O IL IMPORTE TOUTEFOIS DE SOULIGNER QUE LA
  MODIFICATION PROPOSÉE DEVRAIT AVOIR POUR UNIQUE
  OBJET DE RENFORCER LES DISPOSITIONS RELATIVES À
  L'ÉGALITÉ DES SEXES QUI PEUVENT PARAÎTRE COMPORTER
  DES LACUNES. JE NE SUIS PAS PRÊT À SOUSCRIRE À
  UNE MODIFICATION VISANT, DIRECTEMENT OU
  INDIRECTEMENT, QUELQUE AUTRE OBJECTIF.

- O NOUS POURRIONS PEUT-ÊTRE MAINTENANT DÉTERMINER SI NOS POSITIONS CONCORDENT SUFFISAMMENT POUR NOUS PERMETTRE DE DONNER SUITE À CETTE PROPOSITION.
- o POUR NOUS AIDER DANS NOS DÉLIBÉRATIONS, JE VOUS AI FAIT DISTRIBUER PLUSIEURS VERSIONS POSSIBLES D'UNE MODIFICATION CONSTITUTIONNELLE, QUI ONT ÉTÉ DÉPOSÉES À DIFFÉRENTES ÉTAPES DE L'OPÉRATION EN COURS.

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DOCUMENT: 800-20/011

FIRST MINISTERS' CONFERENCE
ON
ABORIGINAL CONSTITUTIONAL MATTERS

AGENDA ITEM 3:

# MANDATE FOR CONTINUING DISCUSSIONS

LEAD STATEMENT

Federal





# AGENDA ITEM 3: MANDATE FOR CONTINUING DISCUSSIONS

#### LEAD STATEMENT

- O A GREAT DEAL REMAINS TO BE DONE IN THE PERIOD
  LEADING TO THE 1987 FIRST MINISTERS' CONFERENCE.
  A NUMBER OF ISSUES REMAIN TO BE ADDRESSED. THE
  VARIOUS PROPOSALS FROM THE ABORIGINAL ASSOCIATIONS
  MUST ALSO BE CONSIDERED.
- O NEVERTHELESS, DISCUSSION ON THIS AGENDA ITEM
  SHOULD NOT BE UNDULY COMPLICATED. IN MY VIEW, IF
  WE AGREE THAT MINISTERS SHOULD APPLY THEMSELVES
  RESOLUTELY TO THE TASK, WE REQUIRE ONLY A BASIC
  COMMITMENT IN THE ACCORD.
- O I WOULD SUGGEST THAT WE DETERMINE WHETHER THE
  ELEMENTS CONTAINED IN PART II OF THE PROPOSED
  ACCORD PROVIDE A SUITABLE MANDATE FOR MINISTERS.
  THE ESSENTIAL FEATURES ARE:
  - THAT GOVERNMENTS MEET WITH ABORIGINAL
    REPRESENTATIVES TO ADDRESS THE ITEMS LISTED
    IN THE 1983 CONSTITUTIONAL ACCORD AND THE
    PROPOSALS OF THE ABORIGINAL ASSOCIATIONS; AND
  - THAT THERE BE AT LEAST TWO SUCH MEETINGS AT THE MINISTERIAL LEVEL EACH YEAR.
- O IN MY VIEW, WHAT IS REQUIRED BEYOND THESE
  COMMITMENTS IS A CONTINUATION OF THE SPIRIT OF
  FLEXIBILITY AND COOPERATION WHICH HAS
  CHARACTERIZED THE WORK OF MINISTERS SINCE
  DECEMBER.
- O I ALSO WISH TO ASSURE ABORIGINAL REPRESENTATIVES
  THAT THE FEDERAL GOVERNMENT WILL CONTINUE TO BRING
  A STRONG POLITICAL FOCUS TO ALL ASPECTS OF ITS
  PARTICIPATION IN THE DISCUSSIONS LEADING TO 1987.

- O I AM PREPARED TO ASK MR. CROSBIE TO CALL A
  MINISTERS' MEETING IN MAY OR JUNE TO CONSIDER THE
  WORK LEADING TO 1987, BASED ON THE RESULTS OF THIS
  CONFERENCE. MINISTERS COULD ALLOCATE AGENDA ITEMS
  BY ABORIGINAL PEOPLES OR ASSOCIATIONS IN ORDER TO
  ENSURE THAT THE SPECIFIC CONCERNS OF ABORIGINAL
  PEOPLES WILL BE FULLY ADDRESSED.
- O THE ESSENTIAL FEATURE OF THE MANDATE WE GIVE
  MINISTERS IS THAT IT SHOULD ENSURE ALL OUTSTANDING
  ITEMS FROM THE 1983 CONSTITUTIONAL ACCORD AND THE
  PROPOSALS OF THE ABORIGINAL ASSOCIATIONS ARE
  THOROUGHLY EXAMINED FOR OUR CONSIDERATION IN 1987.

DOCUMENT: 800-20/011

CONFÉRENCE DES PREMIERS MINISTRES
SUR LES QUESTIONS CONSTITUTIONNELLES
INTÉRESSANT LES AUTOCHTONES

# POINT # 3:

# MANDAT POUR LA POURSUITE DES DISCUSSIONS

- ENTREE EN MATIERE

Fédéral





# POINT # 3: MANDAT POUR LA POURSUITE DES DISCUSSIONS

# ENTRÉE EN MATIÈRE

- O IL RESTE BEAUCOUP À FAIRE D'ICI À LA PROCHAINE CONFÉRENCE DES PREMIERS MINISTRES, EN 1987. UN CERTAIN NOMBRE DES POINTS INSCRITS À L'ORDRE DU JOUR DE 1983 DEMEURENT EN SUSPENS ET IL FAUDRA AUSSI EXAMINER LES DIVERSES PROPOSITIONS ÉMANANT DES ASSOCIATONS AUTOCHTONES.
- O CE TROISIÈME POINT DE NOTRE ORDRE DU JOUR NE DEVRAIT TOUTEFOIS PAS POSER TROP DE PROBLÈMES, POURVU QU'ON S'ENTENDE GÉNÉRALEMENT DANS L'ACCORD SUR LA NÉCESSITÉ DE RÉGLER LES QUESTIONS ENCORE EN SUSPENS ET D'INVITER NOS MINISTRES À S'ATTELER RÉSOLUMENT À CETTE TÂCHE.
- O JE PROPOSE QUE NOUS DÉTERMINIONS SI LES ÉLÉMENTS DE LA PARTIE II DU PROJET D'ACCORD CONFÈRENT UN MANDAT SUFFISANT AUX MINISTRES. CETTE PARTIE SE RÉSUME ESSENTIELLEMENT À CE QUI SUIT:
  - LES GOUVERNEMENTS DEVRONT DISCUTER AVEC LES
    REPRÉSENTANTS AUTOCHTONES DES POINTS FIGURANT
    DANS L'ACCORD CONSTITUTIONNEL DE 1983 ET DES
    PROPOSITIONS PRÉSENTÉES PAR LES ASSOCIATIONS
    AUTOCHTONES; ET
  - LES MINISTRES DEVRONT SE RÉUNIR AU MOINS DEUX FOIS PAR ANNÉE.
- O IL IMPORTE AUSSI, À MON SENS, DE MAINTENIR
  L'ESPRIT DE CONCILIATION ET DE COLLABORATION QUI
  CARACTÉRISE LES TRAVAUX DES MINISTRES ET DES
  FONCTIONNAIRES DEPUIS DÉCEMBRE.
- O JE VEUX AUSSI DONNER AUX REPRÉSENTANTS AUTOCHTONES L'ASSURANCE QUE LE GOUVERNEMENT FÉDÉRAL CONTINUERA D'ATTACHER UNE GRANDE IMPORTANCE DU POINT DE VUE POLITIQUE À TOUS LES ASPECTS DE SA PARTICIPATION AUX DISCUSSIONS QUI PRÉCÉDERONT LA CONFÉRENCE DE 1987.

- O JE SUIS DISPOSÉ À DEMANDER À M. CROSBIE DE
  CONVOQUER UNE RÉUNION DES MINISTRES ET DES
  REPRÉSENTANTS DES AUTOCHTONES POUR MAI OU JUIN
  DANS LE BUT D'ÉVALUER, À LA LUMIÈRE DES RÉSULTATS
  DE CETTE CONFÉRENCE, LE TRAVAIL QUI DEVRA ÊTRE
  ACCOMPLI D'ICI À CELLE DE 1987. LES MINISTRES
  POURRAIENT RÉPARTIR L'EXAMEN DES POINTS ENCORE EN
  SUSPENS SELON L'INTÉRÊT QU'ILS PRÉSENTENT POUR
  CHAQUE PEUPLE OU ASSOCIATION AUTOCHTONE, AFIN DE
  S'ASSURER QU'IL SOIT PLEINEMENT TENU COMPTE DES
  PRÉOCCUPATIONS PARTICULIÈRES DES DIFFÉRENTS
  PEUPLES AUTOCHTONES.
- LE MANDAT QUE NOUS DONNONS AUX MINISTRES VISE
  ESSENTIELLEMENT À GARANTIR QUE TOUS LES POINTS
  NON ENCORE ABORDÉS DE L'ACCORD CONSTITUTIONNEL DE
  1983, DE MÊME QUE LES PROPOSITIONS ÉMANANT DES
  ASSOCIATIONS AUTOCHTONES, SOIENT EXAMINÉS À FOND
  EN PRÉVISION DE L'ÉTUDE QUE NOUS EN FERONS EN
  1987.

First Ministers Conference

The Rights of Aboriginal Peoples

Conférence des premiers ministres

Les droits des autochtones

Ottawa, April 2-3, 1985

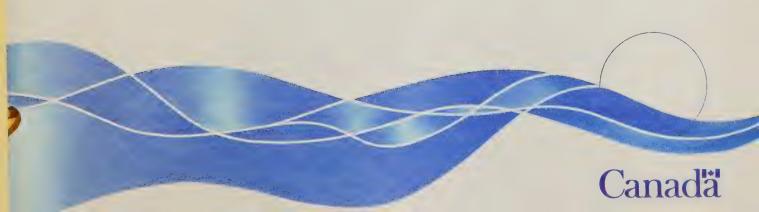
Ottawa, les 2 et 3 avril 1985



PROPOSED 1985 ACCORD RELATING TO THE ABORIGINAL PEOPLES OF CANADA

PROJET D'ACCORD DE 1985 CONCERNANT LES PEUPLES AUTOCHTONES DU CANADA

THE PRIME MINISTER OF CANADA LE PREMIER MINISTRE DU CANADA





# PROPOSED 1985 ACCORD RELATING TO THE ABORIGINAL PEOPLES OF CANADA

The portions of the Accord highlighted in square brackets relate to the constitutional amendment proposal

WHEREAS the aboriginal peoples of Canada, being descendants of the first inhabitants of Canada, are unique peoples in Canada enjoying the rights that flow from their status as aboriginal peoples, from treaties and from land claims agreements, as well as rights flowing from Canadian citizenship, and it is fitting that

- (a) there be protection of rights of aboriginal peoples in the Constitution of Canada,
- (b) they have the opportunity to have self-government arrangements to meet their special circumstances as well as the opportunity to exercise their full rights as citizens of Canada and residents of the provinces and territories, and
- (c) they have the freedom to live in accordance with their own cultural heritage and to use and maintain their distinct languages;

AND WHEREAS, pursuant to section 37.1 of the Constitution Act, 1982, a constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces was held on April 2 and 3, 1985, to which representatives of the aboriginal peoples of Canada and elected representatives of the governments of the Yukon Territory and the Northwest Territories were invited;

AND WHEREAS it was agreed by the government of Canada and the provincial governments, with the support of representatives of the aboriginal peoples of Canada and elected representatives of the governments of the Yukon Territory and the Northwest Territories, that

- (a) the Constitution of Canada should be amended
  - (i) to recognize and affirm the rights of the aboriginal peoples of Canada to self-government within the Canadian federation, where those rights are set out in negotiated agreements, and

- (ii) d'engager le gouvernement fédéral et les gouvernements provinciaux à participer à des négociations visant la conclusion avec les autochtones d'accords relatifs à l'autonomie gouvernementale qui correspondent à la situation particulière de ces peuples,
- (b) qu'il y aurait également lieu de modifier la Constitution du Canada afin d'y préciser la garantie d'égalité des droits dont bénéficient les autochtones des deux sexes,
- (c) qu'il y aurait lieu de définir les modalités des discussions qui précéderont la deuxième conférence constitutionnelle prévue par l'article 37.1 de la Loi constitutionnelle de 1982,
- (d) que les gouvernements et les autochtones bénéficieraient de toute amélioration apportée à la collaboration entre le fédéral, les provinces et les territoires à l'égard des questions, et plus spécialement des programmes et des services, intéressant les peuples autochtones du Canada,
- (e) que les gouvernements et les peuples autochtones du Canada bénéficieraient de toute amélioration des renseignements statistiques relatifs aux autochtones, surtout grâce au recensement général prévu pour 1986,

les gouvernements fédéral et provinciaux sont convenus de ce qui suit:

#### PARTIE I

## AUTONOMIE GOUVERNEMENTALE ET [ÉGALITÉ DES DROITS]

- 1. Le premier ministre du Canada et les premiers ministres provinciaux déposeront ou feront déposer avant le 31 décembre 1985, devant le Sénat et la Chambre des communes et devant les assemblées législatives respectivement, une résolution, établie en la forme de celle qui figure à l'annexe I, autorisant la modification de la Constitution du Canada par proclamation de Son Excellence le gouverneur général sous le grand sceau du Canada.
- 2. Les accords visés au [projet d'alinéa 35.01(2)a) de la Loi constitutionnelle de 1982 visé à l'annexe I] devront avoir au besoin pour objet:
  - (a) d'accroître la compétence des autochtones sur les territoires qui leur ont été affectés et leurs responsabilités à l'égard de ceux-ci;

- 2 -(ii) to commit the government of Canada and the provincial governments to participate in negotiations directed toward concluding agreements with aboriginal people relating to self-government that are appropriate to the particular circumstances of those people, (b) the Constitution of Canada should be further amended to clarify the provisions relating to equality rights for aboriginal men and women, (c) direction should be provided for the continuing discussions leading up to the second constitutional conference required by section 37.1 of the Constitution Act, 1982, (d) governments and aboriginal peoples would benefit from a greater degree of federal-provincial-territorial cooperation with respect to matters affecting the aboriginal peoples of Canada, including programs and services provided to them, and governments and the aboriginal peoples of (e) Canada would benefit from better statistical information relating to the circumstances of aboriginal peoples, which could be achieved most efficiently by means of the proposed 1986 Census of Canada; NOW THEREFORE the government of Canada and the provincial governments hereby agree as follows: PART I SELF-GOVERNMENT [AND EQUALITY RIGHTS] 1. The Prime Minister of Canada will lay or cause to be laid before the Senate and House of Commons, and the first ministers of the provinces will lay or cause to be laid before their legislative assemblies, prior to December 31, 1985, a resolution in the form set out in Schedule I to authorize an amendment to the Constitution of Canada to be made by proclamation issued by Her Excellency the Governor General under the Great Seal of Canada. The objectives of agreements negotiated pursuant 2. to [the proposed paragraph 35.01 (2)(a) of the Constitution Act, 1982 set out in Schedule I] shall be, where appropriate, to allow aboriginal people increased authority over and responsibility for lands that have been or may be reserved or set aside for their use; to ensure increased participation of the (b) aboriginal peoples of Canada in government decision-making that directly affects them;

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- (b) de faire participer les peuples autochtones du Canada de plus près au processus de prise de décisions gouvernementales qui les touchent directement;
- (c) de promouvoir le maintien et la valorisation du patrimoine culturel des peuples autochtones du Canada;
- (d) de reconnaître la place particulière des peuples autochtones du Canada.
- 3. Dans les négociations prévues au [projet d'alinéa 35.01(2)a) de la Loi constitutionnelle de 1982 visé à l'annexe I], il peut être tenu compte des éléments suivants:
  - (a) le fait que les accords relatifs à l'autonomie gouvernementale des autochtones peuvent comporter divers accords fondés sur les besoins et la situation propres de ces derniers, en ce qui concerne notamment les gouvernements à caractère ethnique ou public, les modifications à apporter aux structures gouvernementales existantes pour les adapter à la situation particulière des peuples autochtones du Canada, ou la prise en charge des programmes et services et la participation à leur mise en oeuvre ou à leur prestation;
  - (b) le fait que les autochtones concernés disposent d'une assise territoriale définissable;
  - (c) les droits et libertés -- notamment ancestraux ou issus de traités -- des autochtones concernés;
  - (d) les droits et libertés des non-autochtones au sein des collectivités ou des régions où vivent les autochtones;
  - (e) les rapports éventuels entre les questions négociées et les accords de règlement des revendications territoriales qui ont fait l'objet de négociations, le font ou peuvent le devenir, avec les autochtones concernés.
- 4. Les négociations prévues au [projet d'alinéa 35.01(2)a) de la Loi constitutionnelle de 1982 visé à l'annexe I] pourront porter sur toute question relative à l'autonomie gouvernementale et, notamment, sur:
  - (a) l'appartenance au groupe d'autochtones concernés;
  - (b) la nature et les pouvoirs des institutions gouvernementales;
  - (c) les attributions de ces institutions et la prise en charge par elles de certains programmes et services;

- (c) to maintain and enhance the distinct culture and heritage of the aboriginal peoples of Canada; and
- (d) to recognize the unique position of the aboriginal peoples of Canada.
- 3. The negotiations referred to in [the proposed paragraph 35.01 (2)(a) of the Constitution Act, 1982 set out in Schedule I] may have regard to the following factors:
  - (a) that agreements relating to self-government for aboriginal people may encompass a variety of arrangements based on the particular needs and circumstances of those people, including ethnic-based government, public government, modifications to existing governmental structures to accommodate the unique circumstances of the aboriginal peoples of Canada and management of, and involvement in, the delivery of programs and services;
  - (b) the existence of an identifiable land base for the aboriginal people concerned;
  - (c) aboriginal and treaty rights, or other rights and freedoms, of the aboriginal people concerned;
  - (d) the rights and freedoms of the non-aboriginal people in the communities or regions where the aboriginal people live; and
  - (e) any relationship between the matters being negotiated and land claims agreements that have been, are being or may be negotiated with the aboriginal people concerned.
- 4. The negotiations referred to in [the proposed paragraph 35.01 (2)(a) of the Constitution Act, 1982 set out in Schedule I] may address any appropriate matter relating to self-government including, among other matters,
  - (a) membership in the group of aboriginal people concerned;
    - (b) the nature and powers of the institutions of self-government;
  - (c) responsibilities of, and programs and services to be provided by, the institutions of self-government;
  - (d) the definition of the geographic areas over which the institutions of self-government will have jurisdiction;
  - (e) resources to which the institutions of self-government will have access;
  - (f) fiscal arrangements and other bases of economic support for the institutions of self-government; and

- 4 -

- (d) la délimitation du territoire relevant de leur compétence;
- (e) les ressources auxquelles elles auront accès;
- (f) les arrangements fiscaux et autres dispositions à prendre en vue de leur soutien économique;
- (g) les droits distincts des autochtones concernés.
- 5. Entre la date de signature du présent accord et celle à laquelle entrera en vigueur la modification constitutionnelle dont le texte figure à l'annexe I, les gouvernements fédéral et provinciaux, en consultation avec les représentants des autochtones, prendront toutes mesures nécessaires pour engager les négociations prévues par la modification constitutionnelle en question.
- 6. Le groupe ministériel visé à l'article 8 du présent accord sera régulièrement informé des progrès des négociations visées à [la modification constitutionnelle figurant à l'annexe I].

# PARTIE II

# PRÉPARATIFS DE LA PROCHAINE CONFÉRENCE CONSTITUTIONNELLE

- 7. Afin de préparer la deuxième conférence constitutionnelle prévue par l'article 37.1 de la Loi constitutionnelle de 1982, les gouvernements fédéral et provinciaux organiseront les réunions qu'exigeront d'une part la discussion des questions inscrites à l'ordre du jour de la conférence constitutionnelle des 15 et 16 mars 1983 et figurant dans l'Accord constitutionnel de 1983 sur les droits des autochtones, d'autre part l'étude des mesures constitutionnelles proposées par les représentants des peuples autochtones du Canada, étant entendu que des représentants des gouvernements du territoire du Yukon et des territoires du Nord-Ouest ainsi que les représentants des peuples autochtones du Canada participeront aux réunions en question.
- 8. Un groupe constitué de ministres fédéraux et provinciaux, de représentants des peuples autochtones du Canada et de représentants élus des gouvernements du territoire du Yukon et des territoires du Nord-Ouest se réunira au moins deux fois dans les douze mois suivant la date de signature du présent accord, et au moins deux autres fois entre l'expiration de cette période et la date de la deuxième conférence constitution-nelle prévue par l'article 37.1 de la Loi constitutionnelle de 1982. Les réunions en question seront présidées par le ministre fédéral désigné à cet effet.

- 4 distinct rights for the aboriginal people (q) concerned. During the period between the date this Accord is signed and the date the constitutional amendment set out in Schedule I comes into force, the government of Canada and the provincial governments, in consultation with representatives of aboriginal people, shall take such measures as are necessary to commence the negotiations contemplated by that amendment. Periodic reports on the progress of negotiations contemplated by [the constitutional amendment set out in Schedule I] shall be made to the 6. ministerial meetings referred to in article 8 of this Accord. PART II PREPARATIONS FOR CONSTITUTIONAL CONFERENCE 7. In preparation for the second constitutional conference required by section 37.1 of the Constitution Act, 1982, the government of Canada and the provincial governments shall, with the participation of representatives of the aboriginal peoples of Canada and representatives of the

- conference required by section 37.1 of the
  Constitution Act, 1982, the government of Canada
  and the provincial governments shall, with the
  participation of representatives of the aboriginal
  peoples of Canada and representatives of the
  governments of the Yukon Territory and the
  Northwest Territories, conduct such meetings as
  are necessary to deal with the items included in
  the agenda of the constitutional conference held
  on March 15 and 16, 1983 and listed in the 1983
  Constitutional Accord on Aboriginal Rights and to
  deal with the constitutional proposals of the
  representatives of the aboriginal peoples of
  Canada.
- 8. Ministerial meetings, composed of designated ministers of the government of Canada and the provincial governments, representatives of the aboriginal peoples of Canada and elected representatives of the governments of the Yukon Territory and the Northwest Territories, under the chairmanship of a designated minister of the government of Canada, shall be convened at least twice in the twelve month period immediately following the date this Accord is signed, and at least twice in the period between the end of that twelve month period and the date on which the second constitutional conference required by section 37.1 of the Constitutional Act, 1982 is held.
- 9. The ministerial meetings referred to in article 8 of this Accord shall
  - (a) issue directions as to work to be undertaken by technical or other working groups and review and assess that work on a periodic basis;
  - (b) seek to reach agreement or consensus on issues to be laid before first ministers at the second constitutional conference required by section 37.1 of the <u>Constitution Act</u>, <u>1982</u>; and

- 9. Le groupe visé à l'article 8 du présent accord aura pour mission:
  - (a) de déterminer les tâches que devront accomplir notamment les équipes de spécialistes qui auront été constituées, ainsi que d'analyser périodiquement le travail effectué par celles-ci;
  - (b) de tenter d'en arriver à un accord ou à une convergence de vues sur les questions qu'il convient d'inscrire à l'ordre du jour de la deuxième conférence constitutionnelle prévue par l'article 37.1 de la Loi constitutionnelle de 1982;
  - (c) de recevoir, conformément à l'article 6 du présent accord, les rapports sur le progrès des négociations en cause.

## PARTIE III

# AUTRES ENGAGEMENTS À L'ÉGARD DES PEUPLES AUTOCHTONES DU CANADA

10. Les gouvernements fédéral et provinciaux, avec la participation des peuples autochtones du Canada et des représentants élus du gouvernement du territoire du Yukon et des territoires du Nord-Ouest, sont également d'accord sur les questions touchant ces peuples énumérées aux annexes II et III.

## PARTIE IV

#### DISPOSITIONS GÉNÉRALES

11. Le présent accord n'a pas pour effet d'empêcher ou de remplacer les discussions, bilatérales ou autres, ou la conclusion d'accords, entre les gouvernements et les divers peuples autochtones du Canada.

(c) receive periodic reports, in accordance with article 6 of this Accord, on the progress of negotiations referred to in that article.

#### PART III

FURTHER UNDERTAKINGS RELATING TO THE ABORIGINAL PEOPLES OF CANADA

10. The government of Canada and the provincial governments, with the participation of the aboriginal peoples of Canada and elected representatives of the governments of the Yukon Territory and the Northwest Territories, further agree on the matters affecting the aboriginal peoples of Canada set out in Schedules II and III.

# PART IV

#### GENERAL

11. Nothing in this Accord is intended to preclude, or substitute for, any bilateral or other discussions or agreements between governments and the various aboriginal peoples of Canada.



Signed at Ottawa this 3<sup>rd</sup> day of April, 1985 by the government of Canada and the provincial governments:

autochtones du Canada

Fait à Ottawa le 3 avril 1985,

par le gouvernement du Canada

et les gouvernements

provinciaux:

	Canada	- Minima Mariana
Ontario		British Columbia Colombie-Britannique
Québec		Prince Edward Island Île-du-Prince-Édouard
Nova Scotia Nouvelle-Écosse		Saskatchewan
New Brunswick Nouveau-Brunswick		Alberta
Manitoba		Newfoundland Terre-Neuve
WITH THE PARTICIPATION OF:		AVEC LA PARTICIPATION DES:
Assembly of First Nations Assemblée des premières nations	Inuit Committee on National Issues Comité inuit sur les affaires nationales	Métis National Council Ralliement national des Métis
Native Council of Canada Conseil des	Yukon Territory Territoire du Yukon	Northwest Territories Territoires du Nord-Ouest

## ANNEXE I

# RÉSOLUTION

Motion de résolution autorisant la modification de la Constitution du Canada

Considérant que la Loi constitutionnelle de 1982 prévoit que la Constitution du Canada peut être modifiée par proclamation du gouverneur général sous le grand sceau du Canada, autorisée à la fois par des résolutions du Sénat et de la Chambre des communes et par des résolutions des assemblées législatives dans les conditions prévues à l'article 38,

(le Sénat) (la Chambre des communes) (l'assemblée législative de) a résolu d'autoriser la modification de la Constitution du Canada par proclamation de Son Excellence le gouverneur général sous le grand sceau du Canada, en conformité avec l'annexe ci-jointe.

#### SCHEDULE I

## RESOLUTION

Motion for a Resolution to authorize an amendment to the Constitution of Canada

WHEREAS the Constitution Act, 1982 provides that an amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by resolutions of the Senate and House of Commons and resolutions of the legislative assemblies as provided for in section 38 thereof;

NOW THEREFORE the (Senate) (House of Commons) (legislative assembly) resolves that an amendment to the Constitution of Canada be authorized to be made by proclamation issued by Her Excellency the Governor General under the Great Seal of Canada in accordance with the schedule hereto.

# ANNEXE

#### MODIFICATION DE LA CONSTITUTION DU CANADA

[Modification éventuelle des droits à l'égalité]

1. La Loi constitutionnelle de 1982 est modifiée par insertion, après l'article 35, de ce qui suit:

Droits à l'autonomie gouvernementale

"35.01(1) Sont reconnus et confirmés les droits des peuples autochtones du Canada à l'autonomie gouvernementale au sein de la fédération canadienne prévus par tout accord visé à l'article 35.02.

Engagement relatif aux négociations

- (2) Les gouvernements fédéral et provinciaux s'engagent, dans la mesure de leur compétence respective, à:
  - (a) participer à des négociations en vue de conclure avec les représentants des autochtones vivant au sein de collectivités ou dans des régions particulières des accords relatifs à l'autonomie gouvernementale qui correspondent à la situation particulière de ceux-ci;
  - (b) discuter avec les représentants des autochtones de chacune des provinces, du territoire du Yukon et des territoires du Nord-Ouest du calendrier, de la nature et de la portée de ces négociations.

Participation des territoires

(3) Le gouvernement fédéral peut inviter le gouvernement du territoire du Yukon ou celui des territoires du Nord-Ouest à participer aux négociations visées à l'alinéa (2)a), si elles portent sur des collectivités ou régions de ce ou ces territoires.

Application du paragraphe 35.01(1)

35.02 Pour l'application du paragraphe 35.01(1), les droits des peuples autochtones du Canada à l'autonomie gouvernementale peuvent être prévus dans tout accord conclu avec les représentants des autochtones sous le régime de l'alinéa 35.01(2)a) et qui, à la fois:

#### SCHEDULE

# AMENDMENT TO THE CONSTITUTION OF CANADA

[Possible Equality Rights Amendment]

1. The Constitution Act, 1982 is amended by adding thereto, immediately after section 35 thereof, the following sections:

Rights to self-government

"35.01(1) The rights of the aboriginal peoples of Canada to self-government, within the context of the Canadian federation, that are set out in agreements in accordance with section 35.02 are hereby recognized and affirmed.

Commitment relating to negotiations for self-government

- (2) The government of Canada and the provincial governments are committed, to the extent that each has authority, to
  - (a) participating in negotiations directed toward concluding, with representatives of aboriginal people living in particular communities or regions, agreements relating to self-government that are appropriate to the particular circumstances of those people; and
  - (b) discussing with representatives of aboriginal people from each province and from the Yukon Territory and Northwest Territories the timing, nature and scope of the negotiations referred to in paragraph (a).

Participation of territories

(3) The government of Canada may invite the government of the Yukon Territory or the Northwest Territories to participate in negotiations referred to in paragraph (2)(a) where the negotiations relate to communities or regions within the Yukon Territory or the Northwest Territories, as the case may be.

Application of section 35.01(1)

35.02 The rights of the aboriginal peoples of Canada to self-government may, for the purposes of subsection 35.01(1), be set out in agreements concluded pursuant to paragraph 35.01(2)(a) with representatives of aboriginal people that

- (a) comporte une déclaration où il est fait état de l'application du paragraphe 35.01(1) à ces droits;
- (b) est approuvé par une loi fédérale et une loi de chaque province où vivent ces autochtones."
- 2. L'article 61 de la même loi est abrogé et remplacé par ce qui suit:

#### Mentions

"61. Toute mention de la Loi constitutionnelle de 1982 ou des Lois constitutionnelles de 1867 à 1982 est réputée constituer également une mention de toute modification qui y est apportée."

#### TITRE

3. Titre de la présente modification: Modification constitutionnelle de année de la proclamation (peuples autochtones du Canada).

- (a) include a declaration to the effect that subsection 35.01(1) applies to those rights; and
- (b) are approved by an Act of Parliament and Acts of the legislatures of any provinces in which those aboriginal people live."
- 2. Section 61 of the said Act is repealed and the following substituted therefor:

#### References

- "61. A reference to the Constitution Act, 1982, or a reference to the Constitution Acts 1867 to 1982, shall be deemed to include a reference to any amendments thereto."
- 3. This Amendment may be cited as the Constitution Amendment, year of proclamation (Aboriginal peoples of Canada).

# ANNEXE II

COLLABORATION FÉDÉRALE-PROVINCIALE-TERRITORIALE À L'ÉGARD DES QUESTIONS INTÉRESSANT LES PEUPLES AUTOCHTONES DU CANADA

- 1. Les gouvernements fédéral, provinciaux et territoriaux s'engagent à veiller au mieux-être socio-économique des peuples autochtones du Canada et à coordonner les programmes et services fédéraux, provinciaux ou territoriaux qui leur sont destinés.
- 2. Pour réaliser ces objectifs, les gouvernements fédéral, provinciaux et territoriaux auront régulièrement, avec la participation des représentants des peuples autochtones du Canada, des discussions bilatérales ou multilatérales, selon le cas, qui viseront:
  - (a) à déterminer leurs mandats et obligations respectifs à l'égard des peuples autochtones du Canada;
  - (b) à améliorer leur collaboration en ce qui concerne les interventions de l'État touchant directement les peuples autochtones du Canada, et notamment les programmes et services, de manière que ces interventions soient aussi efficaces que possible;
  - (c) à confier aux institutions gouvernementales des peuples autochtones du Canada, lorsqu'il y a lieu, le soin de concevoir et de mettre en oeuvre les programmes, ou de dispenser les services, publics.

#### SCHEDULE II

# FEDERAL-PROVINCIAL-TERRITORIAL COOPERATION ON MATTERS AFFECTING THE ABORIGINAL PEOPLES OF CANADA

- 1. The government of Canada and the provincial and territorial governments are committed to improving the socio-economic conditions of the aboriginal peoples of Canada and to coordinating federal, provincial and territorial programs and services for them.
- 2. In order to achieve the objectives set out in article 1 of this Schedule, the government of Canada and the provincial and territorial governments shall, with the participation of representatives of the aboriginal peoples of Canada, enter into regular discussions, on a bilateral or multilateral basis as appropriate, which shall have the following additional objectives:
  - (a) the determination of the respective roles and responsibilities of the government of Canada and the provincial and territorial governments toward the aboriginal peoples of Canada;
  - (b) the improvement of federal-provincialterritorial cooperation with respect to the provision of programs and services, as well as other government initiatives, to the aboriginal peoples of Canada so as to maximize their effectiveness; and
  - (c) the transfer to institutions of self-government for the aboriginal peoples of Canada, where appropriate, of responsibility for the design and administration of government programs and services.

# ANNEXE III

## STATISTIQUES SUR LES PEUPLES AUTOCHTONES DU CANADA

- 1. Les gouvernements fédéral et provinciaux, les gouvernements des territoires et les représentants des peuples autochtones du Canada ont besoin de meilleures données socio-économiques au sujet de ces peuples, et plus spécialement en matière démographique, afin de pouvoir plus facilement adapter leur action aux besoins sociaux, économiques et culturels de ces peuples.
- 2. En conséquence, les gouvernements fédéral et provinciaux, avec la participation des représentants des peuples autochtones du Canada et de ceux des gouvernements du territoire du Yukon et des territoires du Nord-Ouest, constitueront immédiatement un groupe de travail chargé de définir la façon dont les informations provenant du recensement national de 1986 pourraient être exploitées pour réaliser l'objectif susmentionné et, si nécessaire, de prévoir les renseignements supplémentaires utiles; ce groupe présentera ses recommandations aux participants au plus tard à la fin de mai 1985.
- 3. La solution que le groupe de travail prévu à l'article 2 de la présente annexe amènera à proposer comportera des recommandations sur la consultation et l'exploitation des données obtenues et sur les modalités suivant lesquelles seront partagés les frais d'application des mesures de prise de données qui s'ajouteront au recensement de 1986 proprement dit.

#### SCHEDULE III

# STATISTICAL DATA RESPECTING THE ABORIGINAL PEOPLES OF CANADA

- 1. It is recognized that the government of Canada, the provincial and territorial governments and representatives of the aboriginal peoples of Canada are in need of improved data relating to the socio-economic situation of the aboriginal peoples of Canada, including the numbers and geographic concentrations of those peoples, so as to facilitate the structuring of initiatives to better meet their social, economic and cultural needs.
- 2. In order to obtain data referred to in article 1 of this Schedule, the government of Canada and the provincial governments, with the participation of representatives of the aboriginal peoples of Canada and representatives of the governments of the Yukon Territory and the Northwest Territories, shall forthwith establish a technical working group for the purpose of developing a proposal to use the 1986 Census of Canada and, if considered necessary, to supplement information taken therefrom, which group shall present its recommendations to the participants no later than the end of May, 1985.
- 3. The proposal referred to in article 2 of this Schedule shall include recommendations for use of and access to the data obtained and for cost-sharing with respect to the implementation of measures to obtain data that are to be taken in addition to measures taken within the existing structure of the 1986 Census of Canada.



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# FIRST MINISTERS' CONFERENCE ON ABORIGINAL CONSTITUTIONAL MATTERS

 $\begin{array}{c} \underline{\text{Opening Statement}} \\ \underline{\text{by}} \\ \underline{\text{Premier René Lévesque}} \end{array}$ 

Quebec





Here we are meeting for the third time in as many years for the purpose of spelling out more clearly the nature of aboriginal rights.

As we are all aware, Quebec is participating in this process under special circumstances. We agreed to join in this exercise from the outset solely at the urging of the representatives of Quebec's aboriginal nations, and it is for that same reason that we are continuing to do so.

I must therefore reiterate once again that our presence can in no way be interpreted as a recognition of the Constitution Act, 1982, which was enacted without our consent. In this regard - and it is somewhat ironic to have to mention this at a time when we are contemplating constitutional recognition of not only individual but collective and, as it were, national rights of the aboriginal peoples - I must stress that the rest of Canada still does not accept the identity of another nation which is just as distinct as any other and is concentrated mainly in Quebec, where its only true homeland, I believe, is to be found; a nation which the Canada Bill took the liberty of ignoring completely as though it were a mere collection of individuals. We know to what extent individuals, persons are fundamental, sacred; but a person also belongs to a social community. In our case we were treated as though we were a collection of individuals with no separate affiliation, whereas in fact French Quebec has an undeniably national character, whether or not this is recognized.

At our meeting last year I referred to two initiatives our government was preparing to take within the framework of what I called the co-existence of the aboriginal peoples and other Quebecers within Quebec society. Our government intended to devote its every effort to the search for formulas for co-existence and the conclusion of agreements giving them concrete form so as to ensure the most harmonious and enriching relations possible between the aboriginal peoples and all other Quebecers, based on respect for everyone's fundamental equality and dignity.

With respect to the first of these initiatives, it gives me pleasure to table here the full text of the Resolution adopted by the Quebec National Assembly on March 20. With your permission, I would like to draw your attention to one particularly significant aspect of it.

This Resolution is in no way restrictive and, with the exception of the clause dealing with equality of the sexes, it does not purport to usurp the role of other autorities - of the federal government or the aboriginal nations themselves - in recognizing or granting rights. What it essentially does is to declare that Quebec will guarantee the aboriginal peoples

their rights, and that this guarantee will be set out in duly signed agreements, which it will be possible to amend if necessary with the consent of the signatories.

Quebec has already explicity recognized that aboriginal nations within its boundaries have certain rights - for example, those set out in the James Bay and Northern Quebec and the Northeastern Quebec Agreements - and is ensuring their exercise by means of agreements enshrined in its own legislation; in other cases it has done so as a matter of equity rather than through legal or constitutional provisions, as was the case, for example, with the ancestral hunting and fishing rights recognized to the Attikamek and Montagnais nations, even within the territory decreed to be "territory of the government of Quebec" by the Royal Proclamation of 1763.

In the final analysis, however, whatever the rights of the aboriginal peoples may be, whatever their source may be, however they are "constitutionalized", it will always be of prime importance for such rights to be able to be exercised concretely and harmoniously, as far as possible. The courts will of course always have an important role to play in protecting enshrined rights, but it is to be hoped that together we can find ways of

defining our modes of co-existence by taking into account not only, or perhaps even primarily, that sword of Damocles which our judicial system rightly constitutes, but first and foremost the fact that we live together, that we come into contact with one another daily within a certain territory which we share.

I know that on several occasions representatives of aboriginal nations have tended to downplay, if not doubt, the role which the provincial governments have assumed in dealings with them. I understand this. It is history itself that has fostered their fears, a history in which more often than not the federal government alone has been left to concern itself with them. However, the provincial governments, including the successive governments in Quebec City for some 25 years now, have adopted a course of action of assuming greater responsibility, which the current pan-Canadian process in which we have joined will enable us to define more clearly and enhance, it is to be hoped. At the conclusion of this course of action, and even along the way, the provincial governments will also have to make a commitment to the aboriginal peoples, and the latter will have to assess the significance of that commitment.

It should go without saying that since the situation often varies a great deal from one province to the next, the commitments our provincial governments make will frequently differ. In any event, it seems to me that we must reject a uniform approach, which might prevent us from agreeing with the representatives of the aboriginal nations on forms of co-existence which respect their goals as well as reality.

The second initiative I referred to last year was the signing of a "government-to-government" type of agreement with the Kahnawake Mohawks respecting construction of their hospital. The agreement was signed on April 24 of last year. It gives me pleasure to table a copy of it. You will all appreciate that this agreement, the provisions of which take precedence over our laws under special legislation passed by the National Assembly on June 12, 1984, required on the part of all concerned, as well as a good measure of mutual trust, a profound belief that it is on the basis of respect for everyone's dignity that profitable forms of co-existence can be built.

While remaining associated with the present process - at least so long as that seems desirable to the aboriginal peoples of Quebec - we shall pursue our own course of action

aimed at clarifying and spelling out in greater detail the exercise by the aboriginal peoples of the rights which are theirs by virtue of history, equity, harmony or constitutions.

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# CONFÉRENCE DES PREMIERS MINISTRES SUR LES QUESTIONS CONSTITUTIONNELLES INTÉRESSANT LES AUTOCHTONES

## Allocution d'ouverture

du

Premier ministre, Monsieur René Lévesque

Québec



OTTAWA (Ontario) Les 2 et 3 avril 1985



Nous voici réunis pour la troisième fois en autant d'années dans le but de préciser la nature des droits des Autochtones. Comme chacun le sait la participation du Québec à ce processus se fait dans un contexte particulier.

Si nous avons accepté de nous associer depuis le début à cet exercice, c'est uniquement pour nous rendre à l'insistance des représentants des nations autochtones du Québec, et c'est pour la même raison que nous continuons à le faire.

Je me dois donc de rappeler encore une fois que notre présence ne peut d'aucune façon être interprétée comme une reconnaissance de la loi constitutionnelle de 1982 adoptée sans notre consentement. A cet égard, et c'est presque ironique d'avoir à le mentionner au moment où on envisage la reconnaissance constitutionnelle de droits - non seulement individuels mais collectifs, de droits en quelque sorte nationaux des peuples autochtones -, il me faut bien souligner que le reste du Canada n'admet pas encore l'identité d'une autre nation, tout aussi distincte que n'importe quelle autre et qui est surtout concentrée au Québec où elle trouve, je crois, sa seule vraie patrie; une nation que le Canada Bill s'est permis d'ignorer totalement comme s'il s'agissait d'une simple collection d'individus. On sait à quel point l'individu, la personne, c'est

fondamental, c'est sacré; mais une personne appartient aussi à une communauté humaine. Dans notre cas on a fait comme s'il s'agis-sait d'une collection d'individus qui n'ont aucune appartenance distincte alors qu'en réalité le Québec français possède un caractère indiscutablement national, qu'on l'admette ou qu'on ne l'admette pas.

Lors de notre rencontre de l'année dernière j'avais évoqué deux gestes que notre gouvernement se préparait à poser dans le cadre de ce que j'appelais la coexistence des Autochtones et des autres Québécois à l'intérieur de la société québécoise. C'est en effet à la recherche de formules de coexistence et à la conclusion d'ententes qui les concrétisent que notre gouvernement entendait consacrer ses meilleurs efforts pour assurer, dans le respect de l'égalité fondamentale et de la dignité de chacun, les relations les plus harmonieuses et enrichissantes possibles entre les Autochtones et l'ensemble des Québécois.

Concernant le premier de ces gestes, il me fait plaisir de déposer ici le texte intégral de la Résolution adoptée le 20 mars dernier par l'Assemblée nationale du Québec. Vous me permettrez d'en souligner un aspect particulièrement significatif.

Cette Résolution n'est aucunement restrictive et, sauf la clause concernant l'égalité des sexes, elle ne prétend pas se substituer

à d'autres autorités - celle du fédéral ou des nations autochtones elles-mêmes - pour reconnaître ou octroyer des droits. Ce qu'elle fait essentiellement, c'est de proclamer que l'Etat québécois assurera aux Autochtones l'exercice de leurs droits, et que cette assurance passera par des ententes dûment signées, qu'on pourra modifier au besoin avec le consentement des parties signataires.

Le Québec a déjà reconnu explicitement certains droits à des nations autochtones de son territoire, par exemple ceux inscrits dans la Convention de la Baie-James et du Nord québécois et dans celle du Nord-Est québécois et en assure l'exercice par voie d'ententes consacrées dans ses propres lois; dans d'autres cas, c'est plutôt en vertu de l'équité que de textes légaux ou constitutionnels qu'il l'a fait, par exemple pour ce qui concerne les droits ancestraux de chasse et pêche reconnus aux nations attikameks et montagnaises même à l'intérieur du territoire décrété «territoire du gouvernement du Québec» par la Proclamation royale de 1763.

Mais, en définitive, quels que soient les droits des Autochtones, quelle qu'en soit la source, quelle qu'en soit la «constitutiona-lisation», il restera toujours de primordiale importance que de tels droits puissent s'exercer concrètement et, autant que possible, dans l'harmonie. Evidemment les tribunaux auront toujours un rôle important à jouer pour ce qui concerne la sauvegarde de droits inscrits, mais il faut espérer que l'on puisse trouver ensemble des façons de définir nos modes de coexistence en tenant compte non seulement, ni

même principalement peut-être, de cette épée de Damoclès que constitue à juste titre notre système judiciaire, mais d'abord et avant tout du fait que nous vivons ensemble, que nous nous côtoyons en quelque sorte quotidiennement sur un territoire donné que nous avons à partager.

Je sais qu'à plusieurs occasions des représentants de nations autochtones ont voulu mettre en veilleuse, sinon en doute, le rôle des gouvernements provinciaux à leur égard. Je les comprends. C'est l'histoire elle-même qui s'est chargée de nourrir leurs appréhensions, une histoire qui plus souvent qu'autrement a laissé au seul gouvernement fédéral le devoir de se préoccuper d'eux. Malgré tout, les gouvernements des provinces, dont ceux qui se sont succédé à Québec depuis quelque 25 ans, ont amorcé une démarche de responsabilisation que l'actuel processus pan-canadien auquel nous sommes associés permettra, il faut l'espérer, de préciser et approfondir. Au terme de cette démarche, et même en cours de route, il faudra que les gouvernements provinciaux aussi s'engagent à l'égard des Autochtones et que ceux-ci mesurent bien l'importance de cet engagement.

Est-il besoin de rappeler ici que, la situation étant très souvent fort différente d'une province à l'autre, les engagements que nos gouvernements provinciaux prendront devront dans bien des cas différer des uns des autres. En tout cas, il me semble qu'on doive rejeter

une approche uniforme, laquelle pourrait nous empêcher de nous entendre avec les représentants des nations autochtones sur des formes de coexistence qui respectent à la fois leurs objectifs et la situation concrète.

Le second geste que j'avais évoqué l'an dernier, c'était la signature d'une entente du genre «gouvernement à gouvernement» avec les Mohawks de Kahnawake touchant la construction de leur hôpital.

L'entente fut effectivement signée le 24 avril dernier. Il me fait plaisir d'en déposer une copie. Chacun comprendra que cette entente, dont les clauses l'emportent sur nos lois en vertu d'une législation spéciale à cet effet adoptée par l'Assemblée nationale le 12 juin 1984, exigeait de la part de tous les intervenants, en plus d'une bonne dose de confiance mutuelle, la conviction profonde que c'est à partir du respect de la dignité de chacun que peuvent s'édifier des formules de coexistence fructueuses.

Tout en demeurant associés au présent processus - du moins, aussi longtemps que la chose paraîtra désirable aux Autochtones du Québec -, nous continuerons notre propre démarche visant à expliciter, à préciser de mieux en mieux, l'exercice par les Autochtones des droits que l'histoire, l'équité, l'harmonie ou les constitutions leur reconnaissent.



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irst Ministers Conference

800-20/017

ghts of Aboriginal Peoples

ttawa, April 2-3 1985



Notes for an Opening Statement by the Right Honourable Brian Mulroney, Prime Minister of Canada



# NOTES FOR AN OPENING STATEMENT BY THE RIGHT HONOURABLE BRIAN MULRONEY, PRIME MINISTER OF CANADA

FIRST MINISTERS' CONFERENCE THE RIGHTS OF ABORIGINAL PEOPLES OTTAWA, APRIL 2-3, 1985



### INTRODUCTION

It is an honour and an important duty for me to participate with you in this unique undertaking, this Conference of First Ministers on constitutional matters relating to the Inuit, the Indians, and the Métis of Canada. Although many of you have attended the two previous conferences, this is my first. As such, I want to set out my objectives for what I consider to be an essential undertaking for our federation.

It is not my intention, nor that of the new federal government, simply to follow the course which has been charted before. I believe there is new ground which can be explored, new understandings which can be reached.

In these two days of meetings, I wish to affirm and demonstrate the government's commitment to the further identification, definition and constitutional protection of the rights of the aboriginal peoples. I look to the goodwill of all participants to produce tangible progress by the time we adjourn tomorrow. I will make specific commitments on behalf of the federal government. I look for specific commitments from the provincial and territorial governments and from the representatives of the aboriginal peoples.

Given Canada's long-standing traditions of fairness, tolerance and understanding, I know that all Canadians expect this of me and of each of us.

My objective at the Regina Conference on the Economy, and again at the National Economic Conference, was to encourage the key actors in the Canadian economy to recast their dialogue in terms that made issues into shared concerns, not jurisdictional disputes. And so no one should be surprised that one of my objectives for this Conference is to encourage all participants to accept their share of responsibility in the search for new understandings. You know of my commitment to national reconciliation. You know of my determination to breathe new life into and restore harmony to federal-provincial relations. We have seen the advantages of moving to consensus and the new hope it offers us.

To all participants, I want to say that we in the federal government will demonstrate our new approach at this Conference by not surprising you with initiatives for which you are not prepared, nor adopting pressure tactics to move you into positions with which you are not agreed. We will be up front and open.

To the aboriginal leaders, I want to say that, having been a labour negotiator, I know what it means to be sitting on one side of the table, looking at powerful interests on the other. But this is not the situation today. We are here together to try to come to grips with problems common to us all.

# THE CURRENT SITUATION AND ITS BACKGROUND

It is important that we have a common understanding of why we are here. In 1982, after years of attempting to be heard, the Indian, Inuit and Métis peoples convinced governments that there was unfinished business on the national agenda fundamental to their future and to the future of Canada.

You know, I am here today not only as the Prime Minister, but as the Member of Parliament for Manicouagan, one of the largest ridings in Canada, home to Cree, Montagnais, Naskapi, Huron and Inuit. I take pride in the fact that it was Gaston McKenzie, a Montagnais leader, who seconded my nomination as the Progressive Conservative candidate there.

I am well aware of the issues and problems faced by the aboriginal peoples I represent, as well as those faced by aboriginal peoples across Canada. As Prime Minister, I have a responsibility to lead, a responsibility to initiate change. And so I say to you that I will spare no effort to establish the conditions to bring about the changes which must occur. It is to create change that we are engaged in this process, a process which can be frustrating, slow, and tortuous. Yet, we cannot afford to abandon it simply because the task is too daunting or because vested interests will be disturbed. On the contrary, we must renew our efforts.

It is an important task that Canada embarked on in 1982, when three articles were included in the Constitution Act dealing specifically with the aboriginal peoples. In doing so, a commitment was made that we were going to engage in fundamental, substantial and positive change respecting aboriginal peoples. In 1983, governments signed an accord which, among other things, extended constitutional protection to land claims agreements and committed governments to the principle that before any amendment is made to the Constitution respecting aboriginal peoples, a conference would be convened in which they would participate.

Although the 1984 Conference did not produce tangible results, new foundations have since been established during the course of the preparatory meetings with Mr. Crosbie and Mr. Crombie. I have followed these meetings with interest and noted the positive will demonstrated by all participants to get the job done, to put forward new ideas, to challenge existing concepts, to draw upon specific experiences, to move toward a consensus.

Ontario, Manitoba and Saskatchewan have made important contributions to moving discussions forward on all elements of our endeavour. I note as well the significant contribution by the governments of Nova Scotia and New Brunswick to the discussions on self-government for aboriginal peoples and to those on the clarification of existing provisions relating to equality between aboriginal men and women. Alberta has brought to these discussions its useful experience based on a relationship with the Métis which remains unique in Canada, under the provincial *Métis Betterment Act*.

I understand that British Columbia, Newfoundland and Prince Edward Island, among other provinces, have stressed the importance of a full and open exchange of views on aboriginal matters, and I welcome it. I was pleased to learn that the National Assembly of Quebec recently adopted a resolution recognizing the special rights of aboriginal peoples. The two territories have offered us their special insights

and inspiration as they explore changes in their political institutions.

For their part, the representatives of the aboriginal peoples have articulated their concerns in a frank and open manner and have contributed constructively to the preparatory discussions.

And so it is no surprise to me that many participants have come to this table expressing a willingness to consider constitutional provisions relating to self-government. The goodwill and momentum which has been generated over the last few months will sustain us in the difficult deliberations ahead and will lead us to concrete results.

# RELATIONS BETWEEN GOVERNMENTS AND ABORIGINAL PEOPLES IN CANADA

The aboriginal leaders present here today and their colleagues at the tribal council, band, community or association level, together represent the descendants of the original peoples of Canada. They have persevered and maintained their cultural identity through many years of adversity. This is part of our national heritage, part of how we define ourselves as a society, something to be celebrated, not ignored.

There is another side, however, to this heritage of tenacity and perseverance. In describing the current situation, I could read you the litany of social indicators on the disparities suffered by aboriginal peoples in unemployment, in lives of despair ending in alcoholism or suicide, the waste in human potential caused by inadequate educational facilities and substandard housing. But I do not want to trade in sorrow. We are familiar enough with the statistics and I know some of you live with them on a day-to-day basis and see them reflected in the eyes of your children.

These social indicators are symptoms of an underlying problem which we must address. They are social indicators which we here in this room can change.

There are those who would say that the answer is more welfare. More social workers. More programs. But that is the way to dependency and misery. As was said by George Manuel, the Shuswap leader whose work in Indian politics has contributed greatly to our being here today, "Indians are not seeking the best welfare system in the world."

So, if more welfare is not the answer, then what is? I say the answer lies in aboriginal peoples assuming more responsibility for their own affairs, setting their own priorities, determining their own programs. As Zebedee Nungak of the Inuit Committee on National Issues said at the ministerial meeting held last month in Toronto, our task here is to do "some constructive damage to the status quo in Canada." We are here to chart a new course and to set out on it.

I have come across Hugh Brody's book, Maps and Dreams, about the Beaver Indian people in northern British Columbia. It is the title which sticks in my mind because that is very much what this is all about: maps and dreams. Maps to find our way to Canada's twenty-first century. Dreams to guide and sustain us.

The Canada we are building for the twenty-first century must have room for self-governing aboriginal peoples. Where our on-going arrangements have failed to leave room for aboriginal peoples to control their own affairs, we must find room. Canada is big enough for us all. We need to rethink our understanding of Canada, so that the aboriginal peoples too will have their own space in our own time.

# SELF-GOVERNMENT FOR ABORIGINAL PEOPLES

Different forms of self-government already exist in Canada and most Canadians take them for granted. Apart from electing their federal and provincial governments, Canadians run their own school boards, village and town councils. Canadians have also created regional governments when

urban centres became too complex to be administered by a single city council.

In Canada, we assume that we can participate in the charting of our destinies, in determining how we are represented, in holding our representatives accountable. But the Indians, Inuit and Métis peoples do not feel they have the same degree of participation.

In Canada, we assume that our cultural and linguistic backgrounds and traditions will be respected, even cherished and enhanced. But Indian, Inuit and Métis peoples do not have this assurance, nor the power to determine their own cultural development. In fact, there were times when aspects of their cultures were subject to legal sanctions and suppression.

The key to change is self-government for aboriginal peoples within the Canadian federation. We are a cautious people and self-government is a term which is worrisome to some of us. But self-government is not something that I fear. It is not an end in itself, but rather a means to reach common goals. It is the vehicle, not the destination. The challenge and satisfaction is in the journey itself.

The federal government's approach to self-government for aboriginal peoples takes account of these realities, of the inventiveness and creativity that Canadians have always shown in developing their democratic institutions. It is through self-government that a people can maintain the sense of pride and self-worth which is necessary for productive, happy lives.

As a Canadian and as Prime Minister, I fully recognize and agree with the emphasis that the aboriginal peoples place on having their special rights inserted into the highest law of the land, protected from arbitrary legislative action. Constitutional protection for the principle of self-government is an overriding objective because it is the constitutional manifestation of a relationship, an unbreakable social contract between aboriginal peoples and their governments.

In seeking constitutional change, I recognize that this alone cannot resolve social and economic problems. Constitutional change is not enough to reduce disparities and correct injustices. Rather, improvements to the economic and social circumstances of aboriginal peoples must be pursued at the same time as changes to our Constitution are sought to define the rights of aboriginal peoples. Action is required on both fronts and these two sets of endeavours, while separate, are mutually supportive.

The new federal government has already initiated actions in regard to aboriginal peoples leading to increased self-government and to increased well-being. In doing so, it has sought the cooperation, participation and contribution of the provinces, territories and aboriginal groups in ensuring the success of these endeavours. These are smaller steps to larger dreams. They are important signals with real significance. Our early track record has already been posted.

Since September, my colleague John Crosbie has ably directed preparations for this Conference by advancing constitutional proposals and exploring possible avenues of compromise with all participants.

For his part, my colleague David Crombie has undertaken a number of important initiatives. He has stated the government's intention to support the political evolution of the Northwest Territories in a way which will lead to the building of Nunavut in the eastern Arctic and give the aboriginal peoples of the western Arctic protection and a strong voice. He has also begun to explore models of self-government as well as changes to policy and legislation that may be needed to create or enhance those models. He is considering block funding through which Indian governments would have more freedom to determine their own priorities and establish their own programs.

He has introduced a process of renovation of Treaty 8, which involves Indian bands living mostly in northern Alberta, Saskatchewan and British Columbia, to deal with past grievances and to establish a sound relationship to move into the future. This renovation process should provide us with a guide for building a positive, constructive relationship with

other aboriginal communities. The Minister has also undertaken an examination of the claims settlement process, giving consideration to alternatives to current policy. He has begun discussions with provinces to address the problems encountered by many urban aboriginal persons.

These are critical initiatives; they underpin our constitutional discussions and root them in reality.

### MY EXPECTATIONS FOR THIS CONFERENCE

Canadians have rightfully objected to excessive intrusion of government into their lives. Governmental control is resented by us all. Yet the most regulated, controlled and intruded-upon in Canada are the aboriginal peoples. One of the changes which must be made in the current state of affairs is the removal of these excessive interventions. The alternative — which is our main agenda item — is self-government.

Governments require a better grasp of aboriginal peoples' needs and aspirations. If they demonstrate sufficient creativity and flexibility, then all of Canada will benefit from aboriginal peoples who are secure in their own cultures and full partners in Canadian society.

Aboriginal peoples need a better understanding of the constraints faced by governments, one which takes into account the realities of the current economic environment.

Canada's aboriginal peoples face difficult choices in the years to come. They will have to decide what mix of traditional and modern life they find appropriate to meet their needs. These are trade-offs that they will have to make as they seek to define their rightful place in Canadian society. But they alone can strike that critical balance between old and new.

This is a challenging prospect for aboriginal peoples and for the rest of us. And if this prospect is to become a reality, it will call for an act of faith and imagination on all sides. The aboriginal peoples will have to be able to count on the continuing understanding and support of governments as they move toward an ever-greater control of their lives and circumstances. We all look forward to a new sharing of responsibility. We all look forward to a new life for the aboriginal peoples of Canada, one in which the opportunity to release creativity and entrepreneurship is fostered and enhanced.

But this cannot be achieved at the expense of cultural identity. I see the aboriginal peoples making their special contribution to Canadian society as Indians, Inuit and Métis. There is no need to sever one's roots.

For those who wish to remain within their communities, that choice should not preclude their ability to lead a rewarding life. The Indian reserve, the Métis settlement and the Inuit community must remain places of retreat and spiritual renewal for those who opt to live in an environment away from the one into which they were born. There are Inuit on Arctic drilling rigs, Métis farmers on the prairies and Indian lawyers in southern cities. I know Billy Diamond of the James Bay Cree who heads a school board and an airline and Mary Simon who spoke out for Inuit interests at the National Economic Conference.

As Mr. Richard Nerysoo pointed out at Regina last February, in reference to the activity in the Northwest Territories on natural resources development, it is not a case of newer technologies destroying older ways, but rather of the new co-existing with the old.

And a renewed sense of self-assurance and self-worth, flowing from the acceptance both by aboriginal peoples and governments in Canada of mutual responsibilities and common objectives, is essential to reduce poverty and dependency. It will enable Indians, Inuit and Métis to play their full roles as active and important contributors to the national economy and as holders of a unique and special place in the national mosaic.

The challenges we face at this Conference will test our wisdom and generosity of spirit as political leaders. These challenges, moreover, will test our ability to translate political will into practical action.

As you know, the *Constitution Act, 1982* and the subsequent Accord of 1983 require that four aboriginal constitutional conferences be convened in the five-year period 1982 to 1987. In effect, then, this Conference represents the mid-point in the aboriginal constitutional process.

Ministers and aboriginal leaders have developed an agenda which, in my view, shows great promise. Over the next two days, we will be discussing self-government for aboriginal peoples, equality between aboriginal men and women and a mandate for more intensive discussions in the next two years. The measure of agreement reached here will determine the shape and pace of events to come over the next two years.

I believe it is within our grasp to make this Conference not just the mid-point, but the turning point in our efforts to identify and define the rights of aboriginal peoples.

Let us decide at this Conference that our Constitution shall acknowledge that aboriginal peoples have a right to self-government.

Let us agree that we will work out together, over time and on a case-by-case basis, the different means, constitutional and otherwise, that will be required to respond to the special circumstances of different aboriginal communities. Such an achievement would be historic in nature, the first step toward a new relationship between self-governing aboriginal communities and governments in Canada, a relationship upon which we may hope to build the mutual trust and confidence that has eluded us for so long.

The Iroquois teach us that it is the obligation of chiefs and elders in councils such as this to keep in mind the unborn generations whose faces are coming toward us. Decisions are to be made with the well-being of the seventh generation in mind. That wisdom should impress upon us the seriousness of our task in these discussions as we work together toward creating a Canada for the twenty-first century, for the descendents of all those who sit around this table unto the seventh generation.

### NOTES

### NOTES

Je crois que nous pouvons faire de cette Conférence le point tournant de cette opération constitutionnelle.

Il m'apparaît essentiel de reconnaître le droit des autochtones à l'autonomie gouvernementale. Convenons de nous engager à établir les modalités selon lesquelles nous pourrons répondre aux circonstances particulières des diverses collectivités autochtones.

Ce serait là une réalisation historique, un premier pas vers l'établissement de nouveaux rapports entre les collectivités autochtones et les gouvernements, des rapports qui permettront d'instaurer la création de ce climat de confiance mutuelle qui nous a échappé depuis si longtemps.

Les Iroquois nous enseignent qu'il est du devoir des chefs et des anciens, lors de réunions comme celle-ci, de penser aux générations qui vont naître, d'assurer leur bien-être jusqu'à la septième génération. Tant de sagesse devrait nous faire prendre conscience de l'importance de notre tâche, nous qui pâtissons le Canada du vingt et unième siècle, pour nos descendants à nous tous, jusqu'à la septième génération.

aérienne; à Mary Simon, qui a défendu les intérêts des Inuit à la Conférence économique nationale.

Comme M. Richard Merysoo le signalait à Régina, en février dernier, à propos de l'exploitation des ressources naturelles dans les Territoires du Mord-Ouest, il ne s'agit pas de détruire les traditions pour faire place aux techniques nouvelles, mais bien de voir comment l'ancien et le nouveau peuvent coexister.

Si nous voulons que les autochtones reprennent confiance en eux-mêmes, il importe que les gouvernements et les autochtones reconnaissent leurs responsabilités mutuelles et leur communauté d'objectifs. C'est là une condition essentielle de la lutte contre la pauvreté et la dépendance. Les Indiens, les Inuit et les Métis pourront ainsi participer pleinement au développement de l'économie nationale, tout en continuant d'occuper leur place particulière dans la société canadienne.

Les défis auxquels nous aurons à faire face au cours de la Conférence qui s'ouvre aujourd'hui mettront à l'épreuve le jugement et l'ouverture d'esprit des chefs politiques que nous sommes. Ces défis nous donneront aussi l'occasion de démontrer notre capacité de traduire notre volonté politique en gestes concrets.

Comme vous le savez, la Loi constitutionnelle de 1982 et l'Accord de 1983 prévoient que de 1982 à 1987, quatre conférences doivent avoir lieu sur les questions constitution-nelles intéressant les autochtones. À la fin de la présente Conférence, nous aurons donc parcouru la moitié du chemin tracé par la Constitution.

Les ministres et les leaders autochtones ont dressé un ordre du jour qui me semble fort prometteur. Au cours des deux prochains jours, nous nous pencherons sur l'égalité entre les gouvernementale des autochtones, sur l'égalité entre les hommes et les femmes autochtones et sur un mandat visant à intensifier les femmes autochtones et sur un mandat visant à intensifier les discussions au cours des deux années à venir. L'étendue du terrain d'entente à cette Conférence déterminera l'orientation et le rythme des travaux des deux années à venir.

ainsi assurés de la survie de leurs cultures et devenus partenaires à part entière au sein de la société canadienne.

Quant aux peuples autochtones, ils doivent mieux comprendre les contraintes auxquelles font face les gouvernements, dont l'action doit être dictée par la situation économique.

Les peuples autochtones du Canada sont appelés à faire des choix difficiles au cours des années à venir. Ils devront trouver eux-mêmes le juste dosage de tradition et de modernisme qui convient à leurs besoins. Ce sont là des compromis qu'ils devront faire pour définir la place qui leur revient au sein de la société canadienne. Mais cet équilibre critique entre l'ancien et le nouveau, eux seuls peuvent le trouver.

Voilà la passionnante perspective qui s'ouvre aux autochtones, ainsi qu'à nous tous. Pour en faire une réalité, tous seront appelés à faire preuve de conviction et d'imagination. Les autochtones devront pouvoir compter sur une compréhension et un appui de tous les instants de la part des gouvernements, au fur et à mesure qu'ils prendront en main leur vie et leur situation. Nous souhaitons tous un nouveau partage des responsabilités. Nous souhaitons tous que les peuples autochtones du Canada puissent pleinement mettre à profit leur tones du Canada puissent pleinement mettre à profit leur créativité et leur esprit d'entreprise.

Pourtant, rien de tout cela ne saurait s'accomplir aux dépens de leur identité culturelle. C'est à titre d'Indiens, d'Inuit et de Métis que les autochtones contribueront au mieux-être de notre société. Nul ne devrait avoir à rompre avec son passé.

Ceux et celles qui choisiront de vivre au sein de leurs communautés ne devront pas sacrifier ainsi toute chance de mener une vie enrichissante. Pour ceux et celles qui décideront de vivre dans un milieu différent de celui qui les a vus naître, la réserve indienne, le village métis et la collectivité inuit devront rester un lieu de ressourcement, de renouveau spirituel. Il y a des Inuit qui travaillent sur des installations de forage dans l'Arctique, des Métis qui exploitent des fermes dans les Prairies et des Indiens qui pratiquent le droit dans nos centres urbains. Je pense à Billy Diamond, des Cris de la Baie centres urbains. Je pense à Billy Diamond, des Cris de la Baie dentes urbains, de commission scolaire et une compagnie

création du Nunavut dans l'est de l'Arctique et à la mise sur pied dans l'ouest d'une administration qui assurera protection et participation aux peuples autochtones. Il a aussi entrepris d'examiner divers modèles d'autonomie gouvernementale ainsi que les changements à apporter à nos politiques et lois pour financement global qui donnerait aux gouvernements indiens plus de latitude pour fixer leurs priorités et élaborer leurs propres programmes.

Il a amorcé l'examen du Traité n° 8 qui touche des bandes indiennes vivant pour la plupart dans le nord de l'Alberta, de la Saskatchewan et de la Colombie-Britannique, afin de régler certains griefs et d'ouvrir la voie à de saines relations pour l'avenir. Cette démarche devrait nous servir de guide dans nos efforts pour établir des rapports positifs et constructifs avec d'autres collectivités autochtones. Le Ministre a également entrepris une étude de la politique de règlement des revendications territoriales afin de voir quelles autres voies pourraient étre suivies. Enfin, il a engagé des discussions avec les provinces au sujet des problèmes que connaissent les autochtones vivant en milieu urbain.

Il s'agit là de démarches essentielles qui sous-tendent nos discussions constitutionnelles et les assoient sur une base concrète.

# CE ÓNE JALLENDS DE LA CONFÉRENCE

Les Canadiens se sont élevés avec raison contre toute intrusion excessive de l'État dans leur vie. Chacun de nous accepte mal un contrôle gouvernemental, quel qu'il soit. Or, les plus touchés par des règlements, des contrôles et des intrusions de toutes sortes sont les autochtones. Il importe donc de supprimer ces interventions excessives. La solution, qui est d'ailleurs notre principal point à l'ordre du jour, c'est l'autonomie gouvernementale.

Les gouvernements se doivent de mieux comprendre les besoins et les aspirations des autochtones. Si les gouvernements manifestent suffisamment de créativité et de souplesse, le Canada tout entier bénéficiera de l'apport des autochtones

sentiment de fierté et l'assurance indispensables à son épanouissement.

En tant que Canadien et en tant que Premier ministre, je comprends parfaitement l'importance que les peuples autochtones accordent à la reconnaissance de leurs droits particuliers dans la loi suprême du pays, où ils seraient à l'abri de toute mesure législative arbitraire. La reconnaissance dans la Constitution du principe de l'autonomie gouvernementale m'apparaît être un objectif primordial parce qu'elle constitue la manifestation la plus solennelle de l'établissement d'un lien, d'un contrat social indissoluble entre les autochtones et les gouvernements.

J'admets que le fait de modifier la Constitution en ce sens ne peut à lui seul régler les problèmes socio-économiques, ni réduire les disparités ni corriger les injustices. Il faut donc, en même temps que nous nous employons à modifier la Constitution pour y définir les droits des autochtones, travailler à améliorer leurs conditions économiques et sociales. Des améliorer leurs conditions économiques et sociales. Des distinctes, ces deux entreprises se renforcent mutuellement.

Le nouveau gouvernement fédéral a déjà pris des initiatives visant à accroître l'autonomie gouvernementale et le bien-être des peuples autochtones et pour ce faire, il a sollicité la collaboration, la participation et la contribution des provinces, des territoires et des autochtones eux-mêmes. Ce ne sont là que les premiers pas vers la réalisation de grands rêves. Mais ce sont aussi des signes révélateurs. Nous avons déjà affiché nos couleurs.

Depuis septembre, mon collègue John Crosbie s'est employé à préparer avec le plus grand soin la Conférence qui nous réunit aujourd'hui. C'est ainsi qu'au cours des derniers mois, il a soumis diverses propositions constitutionnelles aux participants et examiné avec eux certaines possibilités de compromis.

Mon collègue David Crombie a lui aussi pris un certain nombre d'initiatives importantes. Il a clairement indiqué l'intention du gouvernement de favoriser pour les Territoires du Nord-Ouest une évolution politique qui mènera à la

# DES AUTOCHTONES AUTONOMIE GOUVERNEMENTALE

La plupart des Canadiens tiennent pour acquises les diverses formes d'autonomie gouvernementale qui existent au Canada. Non seulement les Canadiens élisent-ils leurs représentants au Parlement et à leur assemblée législative, mais ils gèrent leurs propres conseils municipaux et scolaires. Ils ont constitué des administrations régionales pour gérer des centres urbains devenus trop complexes pour un seul conseil municipal.

Alors que la majorité d'entre nous tient pour acquis que nous pouvons influer sur notre destinée en choisissant ceux qui nous représentent et en exigeant d'eux qu'ils rendent des comptes, les Indiens, les Inuit et les Métis, eux, n'ont pas le même sentiment de participation à notre société.

Nous tenons pour acquis que nos valeurs et nos traditions culturelles et linguistiques seront respectées, voire protégées et valorisées. Mais les Indiens, les Inuit et les Métis n'ont pas cette certitude, pas plus d'ailleurs que le pouvoir de déterminer leur propre développement culturel. En fait, il fut même ner leur propre développement culturel. En fait, il fut même na temps où certaines manifestations de leurs cultures étaient frappées de sanctions légales et d'interdictions.

La clé des changements qui s'imposent pour améliorer le sort des peuples autochtones est de leur accorder l'autonomie gouvernementale au sein de la fédération canadienne. Nous sommes un peuple prudent et la notion d'autonomie gouvernemenmentale peut paraître quelque peu inquiétante pour certains d'entre nous. Mais pas pour moi. L'autonomie gouvernementale n'est pas une fin en soi, mais plutôt un moyen d'atteindre des objectifs communs. C'est l'outil qui sert à bâtir et c'est dans le fait de bâtir que résident le défi et la satisfaction.

L'approche du gouvernement fédéral à l'égard de l'autonomie gouvernementale des autochtones tient compte de ces réalités aussi bien que de l'esprit inventif et créatif dont les Canadiens ont toujours fait preuve dans la définition de leurs institutions démocratiques. C'est dans l'exercice de son autonomie gouvernementale qu'un peuple peut conserver le

vivent chaque jour avec la cruelle réalité qu'elles représentent et en voient le reflet dans les yeux de leurs enfants.

Ces indicateurs sociaux ne sont que les symptômes d'un problème plus profond et c'est à celui-ci que nous devons nous attaquer. Cette situation, nous tous ici aujourd'hui pouvons la changer.

Certains préconisent l'accroissement de l'aide sociale, du nombre de travailleurs sociaux, du nombre de programmes. Mais cette voie mène tout droit à la dépendance et à la misère. Comme l'a dit le leader shuswap George Manuel, dont le dévouement à la cause des Indiens a largement contribué à la conscientisation des gouvernements, «ce que les Indiens veulent n'est certainement pas d'être soumis au meilleur régime d'aide sociale au monde».

La solution n'est donc pas de donner plus d'aide sociale, mais d'après moi, de permettre aux autochtones d'assumer une plus grande responsabilité de leurs propres affaires, de fixer leurs propres priorités, d'établir leurs propres pro-grammes. Comme Zebedee Nungak, du Comité inuit sur les affaires nationales, le faisait remarquer le mois passé à la sercontre ministérielle de Toronto, notre tâche consiste à wbouleverser de façon constructive le statu quo». Nous sommes ici pour tracer une nouvelle voie et pour nous y engager.

Le livre de Hugh Brody sur les Indiens Beaver du nord de la Colombie-Britannique a un titre qui m'a frappé: Maps and Dreams. En effet, il résume parfaitement la démarche dans laquelle nous sommes engagés: guidés et soutenus par notre vision d'une société plus juste, nous cherchons le chemin du Vina société plus juste, nous cherchons le chemin du Vision du vingt et unième siècle.

La société que nous bâtissons pour le prochain siècle doit reconnaître aux autochtones le droit à l'autonomie gouvernementale. Nous devons leur accorder la place qui leur revient partout où nos institutions actuelles ne l'ont pas fait. Le pays est assez grand pour nous tous. Nous devons modifier notre conception du Canada pour laisser aux peuples autochtones la place qui est leur dans la société d'aujourd'hui.

intéressant les autochtones et je m'en réjouis. Je suis heureux aussi que l'Assemblée nationale du Québec ait adopté une résolution reconnaissant les droits particuliers des peuples autochtones. Nous avons en outre bénéficié des interventions fort pertinentes des deux territoires qui explorent actuellement les avenues que peut prendre l'évolution de leurs institutions politiques.

Les représentants des peuples autochtones, quant à eux, nous ont énoncé leurs préoccupations de façon franche et loyale et leur apport aux discussions préparatoires a été des plus constructifs.

Je ne suis donc pas étonné qu'un grand nombre de participants soient prêts à envisager l'adoption d'une disposition constitutionnelle relative à l'autonomie gouvernementale. La bonne volonté et les progrès qui se manifestent depuis les derniers mois nous inspireront tout au long de nos délibérations et nous mèneront à des résultats concrets.

### EL LES PEUPLES AUTOCHTONES RAPPORTS ENTRE LES GOUVERNEMENTS

Les leaders autochtones ici présents et ceux des divers conseils tribaux, bandes et associations représentent les descendants des premiers habitants du Canada qui, faut-il le rappeler, ont lutté pendant de très nombreuses années pour sauvegarder leur identité. Leur culture fait partie intégrante de notre patrimoine national, de ce qui nous permet de nous définir en tant que société. Cet apport culturel, il ne faut pas le négliger, mais bien plutôt le valoriser.

Leur ténacité et leur persévérance n'ont toutefois pas contribué à leur mieux-être. Je pourrais vous énumérer les nombreux indicateurs sociaux qui témoignent des disparités dont sont victimes les autochtones, notamment le chômage, le gaspillage de richesses humaines causé par un système d'enseignement inadéquat et des conditions de logement inaceptables. Mais je ne veux pas négocier le malheur. Nous connaissons assez bien les statistiques. Certains d'entre vous connaissons assez bien les statistiques. Certains d'entre vous

nous sommes engagés dans ce processus qui peut être lent, tortueux et même frustrant. Pourtant, nous ne pouvons pas l'abandonner simplement parce que la tâche paraît insurmontable ou que des acquis pourraient être remis en question. Au contraire, nous devons redoubler d'ardeur.

En 1982, lorsque trois articles visant expressément les peuples autochtones ont été inclus dans la Loi constitution-nelle, le Canada se lançait dans une vaste entreprise, celle de procéder à des changements fondamentaux, substantiels et positifs en ce qui a trait à la situation des autochtones. En tionnel qui, notamment, accordait une protection constitution nelle aux accords portant règlement de revendications nelle aux accords portant règlement de revendications perritoriales et engageait les gouvernements, avant que ne soit apportée à la Constitution quelque modification touchant les peuples autochtones, à tenir une conférence à laquelle ceux-ci participeraient.

Bien que la Conférence de 1984 n'ait pas donné de résultats tangibles, de nouvelles bases ont été établies depuis, lors des rencontres préparatoires entre les participants et MM. Crosbie et Crombie. J'ai suivi ces rencontres avec intérêt et j'ai noté le désir de tous les participants de mener à bien cette entreprise, de soumettre des idées nouvelles, de contester des idées reçues, de tirer profit d'expériences contester des idées regues, de tirer profit d'expériences particulières et de progresser vers un consensus.

L'Ontario, le Manitoba et la Saskatchewan ont largement contribué à faire avancer les discussions sur tous les éléments du dossier. Il convient aussi de souligner l'apport considérable des gouvernements de la Nouvelle-Écosse et du Nouveaunementale et la clarification des dispositions concernant l'égalité entre les hommes et les femmes autochtones. L'Alberta a enrichi les discussions de l'expérience que lui procurent ses rapports uniques avec les Métis sous le régime de la loi qu'elle a adoptée pour améliorer leur situation, la Metis Betterment Act.

On me dit que la Colombie-Britannique, Terre-Neuve et l'Île-du-Prince-Édouard, entre autres, ont insisté sur l'importance de discussions ouvertes et exhaustives sur les questions

Sachez donc que, fidèle à sa nouvelle approche, le gouvernement fédéral ne prendra pas d'initiative inattendue, pas plus qu'il n'aura recours à des mesures de pression pour vous faire adopter des positions contraires à vos principes. Nous allons jouer franc jeu, cartes sur table.

Quand j'étais négociateur dans les conflits de travail, j'ai bien connu le sentiment de ceux qui font face, de l'autre côté de la table, aux représentants d'intérêts puissants. Mais je tiens à préciser que tel n'est pas le cas aujourd'hui, car nous sommes réunis ici pour nous attaquer ensemble à des problèmes qui nous concernent tous.

# ET NOTES HISTORIQUES

Il importe que nous envisagions de la même façon le processus qui nous a amenés ici aujourd'hui. En 1982, après des années d'efforts futiles, les Indiens, les Inuit et les Métis ont finalement convaincu les gouvernements, dans le vif du débat constitutionnel, de régler certaines questions qui touchaient profondément leur avenir propre et celui du Canada tout entier.

Vous savez, je me trouve ici non pas seulement à titre de Premier ministre, mais aussi en tant que député de la circonscription de Manicouagan qui est une des plus vastes du Canada et où habitent des Cris, des Montagnais, des Naskapies des Hurons et des Inuit. Je suis fier de dire que c'est un chef montagnais, Gaston McKenzie, qui a appuyé ma candidature à l'investiture du Parti progressiste-conservateut dans ma circonscription.

Je connais bien la situation des autochtones et les difficultés auxquelles ils font face, autant dans Maniconagan que partout ailleurs au pays. En tant que Premier ministre, il est de mon devoir de prendre les devants, de susciter des changements. C'est pourquoi j'entends ne ménager aucun effort pour mettre en place les mécanismes grâce auxquels les changements en place les mécanismes grâce auxquels les changements essentiels pourront s'opérer. C'est d'ailleurs pour cela que

#### INTRODUCTION

C'est pour moi un honneur et un devoir important que de me joindre à vous dans cette entreprise tout à fait particulière, cette Conférence des premiers ministres sur les questions constitutionnelles concernant les Inuit, les Indiens et les Métis du Canada. Etant donné qu'il s'agit de ma première participation à cette série de conférences, je tiens à vous dire comment j'entrevois cette démarche que j'estime indispensable pour le bien de notre fédération.

Ni moi, ni le nouveau gouvernement fédéral, n'avons l'intention de nous limiter à suivre les sentiers déjà battus. Il existe, J'en suis convaincu, de nouvelles possibilités à explorer ensemble et d'autres points sur lesquels nous entendre.

Au cours de nos délibérations, vous constaterez la détermination du gouvernement à mieux identifier et définir les droits des autochtones et à les protéger plus efficacement dans la Constitution. Je compte sur la bonne volonté de tous pour que nous puissions réaliser des progrès sensibles d'ici l'ajournement, demain. Je prendrai des engagements précis au nom du gouvernement fédéral, et je m'attends à ce que les provinces, les territoires et les représentants autochtones en fassent autant.

Les Canadiens veulent certainement que nos discussions soient empreintes des grandes valeurs qui ont Jalonné l'histoire de notre pays, soit l'équité, la tolérance et la compréhension.

Lors de la Conférence sur l'économie à Régina, puis à la Conférence économique nationale, j'ai incité les principaux intervenants de l'économie à concevoir dorénavant comme des préoccupations communes ce qu'ils qualifiaient auparavant de conflits de juridiction. Aussi, je ne vous étonnerai pas en vous conflits de juridiction. Aussi, je ne vous étonnerai pas en vous invitant tous à assumer votre juste part de responsabilité dans la recherche de nouveaux terrains d'entente.

Vous savez l'importance primordiale que j'accorde à la réconciliation nationale. Vous connaissez ma détermination à renouveler les relations fédérales-provinciales et à rétablir l'harmonie. Il y a des avantages à procéder par consensus; ils se manifestent déjà et suscitent un nouvel espoir.



BRIAN MULRONEY,
LE TRÈS HONORABLE
DU CANADA,
DU PREMIER MINISTRE
D'OUVERTURE
D'OUVERTURE
D'ALLON CANADA,
D'ALL

À LA CONFÉRENCE DES OTTAWA, LES 2 ET 3 AVRIL 1985 OTTAWA, LES 2 ET 3 AVRIL 1985



## Conférence des premiers ministres

Les droits des autochtones

Ottawa, les 2 et 3 avril 1985



Notes pour l'allocution d'ouverture du très honorable Brian Mulroney. Premier ministre du Canada

DOCUMENT: 800-20/019

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# FIRST MINISTERS' CONFERENCE ON ABORIGINAL CONSTITUTIONAL MATTERS



Speaking Notes for National Chief

Assembly of First Nations

OTTAWA, Ontario April 2 and 3, 1985





## National Indian Brotherhood

### **ASSEMBLY OF FIRST NATIONS**

47 CLARENCE STREET, SUITE 300, ATRIUM BUILDING OTTAWA ONTARIO K1N 9K1 (613) 236-0673 TELEX 053-3202

SPEAKING NOTES

FOR

NATIONAL CHIEF

OPENING REMARKS

TO THE

FIRST MINISTERS CONFERENCE 1985

() N

ABORIGINAL CONSTITUTIONAL MATTERS

ASSEMBLY OF FIRST NATIONS

CHECK AGAINST DELIVERY

APRIL 2, 1985

OTTAWA, ONTARIO



PRIME MINISTER; PREMIERS, ABORIGINAL LEADERS, ELDERS, CITIZENS OF THE FIRST NATIONS; AND CITIZENS OF CANADA:

(A FEW SHORT SENTENCES IN CREE)

FIRST NATIONS WELCOME THIS OPPORTUNITY TO MEET WITH YOU ONCE AGAIN AROUND THIS COUNCIL TABLE.

JUST AS OUR ANCESTORS WELCOMED YOURS -

- Over four hundred years ago

OUR ANCESTORS DIDN'T UNDERSTAND EACH OTHER.

BUT, OURS WELCOMED YOURS ANYWAY.

They believed that, sooner or later, succeeding generations would learn to understand and live with each other.

SO FAR, WE HAVE FAILED.

AND, WE COME TO THIS TABLE ONCE AGAIN

To ATTEMPT TO COMMUNICATE TO YOU

THE INTENSITY OF THE URGENCY FIRST NATIONS FEEL.

FOR OVER FOUR HUNDRED YEARS,

IN YOUR LANGUAGES AND IN OUR LANGUAGES,

WE HAVE BEEN UNABLE TO GET YOU TO UNDERSTAND.

I SAY AN INTENSE SENSE OF URGENCY, BECAUSE ...

THE SYMPTOMS OF OUR FAILURE TO COMMUNICATE

HAVE LEFT DEVASTATING SCARS IN THE LIVES OF THE

CITIZENS OF FIRST NATIONS.

STATISTICS SHOW THE TERRIBLE CONDITIONS THAT HAVE BEEN FORCED ON OUR PEOPLES;

Infant mortality rates are 4 to 5 times the National Average;

THE RATE OF VIOLENT DEATH AMONGST OUR PEOPLE IS HIGHER THAN MOST COUNTRIES IN THE WORLD.

OUR UNEMPLOYMENT RATES ARE STAGGERING.

AND YET, OUR PEOPLE SOMEHOW SURVIVE AND WANT TO WORK.

WHERE OUR ECONOMIES: HAVE NOT BEEN DESTROYED BY LOSS OF OUR RESOURCES WE SUPPORT OUR FAMILIES;

WE PUT FOOD ON OUR TABLES;

WE LIVE IN DIGNITY.

WE DON'T WANT DEPENDENCY.

WE DON'T OPPOSE DEVELOPMENT.

BUT, WE WANT DEVELOPMENT THAT RESPECTS OUR CULTURES AND TRADITIONS

- THAT RESPECTS THE LAND
- THAT MAKES US PARTNERS IN THE CANADIAN ECONOMY.

IT SHOULD BE CLEAR TO EVERYONE THAT THESE GOALS CANNOT BE ACHIEVED UNLESS OUR BASIC RIGHTS ARE RECOGNIZED AND RESPECTED.

I HAVE NO CHOICE BUT TO REMIND YOU OF THOSE UNPLEASANT STATISTICS, AND

I HAVE NO CHOICE BUT TO REMIND YOU THAT THE COLONIAL SYSTEM CONTINUES TO VIOLATE OUR RIGHTS.

EVEN THE COURTS ARE TELLING CANADA AND CANADIANS THAT.

LAST NOVEMBER THE SUPREME COURT OF CANADA DECIDED THE GUERIN CASE.

THE LAWYERS FOR THE GOVERNMENT OF CANADA ARGUED THAT

THE MUSQUEAM INDIAN PEOPLE HAD NO RIGHTS TO THEIR RESERVE

They argued that the Crown could have sold Indian homes and Lands and pocketed the money.

THE SUPREME COURT SAID "NO!"

THEY SAID WHAT WE HAVE ALWAYS SAID

THAT WE HAVE <u>INHERENT</u> RIGHTS TO OUR LANDS

RIGHTS THAT DO NOT COME FROM YOUR LAWS BUT FROM OUR LAWS.

AND THEY SAID THAT THIS WAS TRUE BOTH FOR RESERVES

AND FOR UNSURRENDERED TRADITIONAL LANDS.

More recently, in the Meares Island case,

British Columbia and MacMillan Bloedel argued that the Indians had "slept" on their rights

AND COULD NOT NOW ASK FOR PROTECTION OF THEIR LAND AND RESOURCE RIGHTS.

THE BRITISH COLUMBIA COURT OF APPEAL POINTED OUT THAT

On the contrary, Indians had been pressing their claims for generations.

Mr. JUSTICE SEATON SAID:

"We are being asked to ignore this problem as others have ignored it. I am not willing to do that."

British Columbia and MacMillan Bloedell also argued that the recognition of Indian claims would cause confusion and uncertainty among non-Indians.

Mr. JUSTICE MACFARLANE DISAGREED.

HE SAID THAT THE CLAIMS WOULD COME AS A SURPRISE TO NO ONE T

AND THAT THE PUBLIC EXPECTED NEGOTIATIONS AND A SETTLEMENT.

Should we not expect governments to <u>listen</u> to what <u>the</u> courts courts are telling us?

SURELY, AS THE FOREMOST LAWMAKERS IN THIS LAND,

FIRST MINISTERS MUST FEEL HONOUR-BOUND TO RESPECT THE COURTS OF THIS LAND.

AND IT IS NOT JUST THE COURTS.

CANADIAN PEOPLE KNOW WHAT WE ARE SAYING AND THEY SUPPORT US.

WE HEAR THAT DIRECTLY FROM CANADIANS AND IT WAS CONFIRMED IN A PUBLIC GALLUP POLL A YEAR AGO.

THAT GALLUP POLL INDICATED THAT A MAJORITY OF CANADIANS
BELIEVE THAT WE HAVE THE RIGHT TO GOVERN OURSELVES AND OUR
RESOURCES.

WE ARE GRATEFUL TO THE ORGANIZATIONS AND LEADERS THAT HAVE PUBLICLY SUPPORTED THE FIRST NATIONS -

THE CANADIAN LABOUR CONGRESS, THE CANADIAN ETHNOCULTURAL COUNCIL, THE CATHOLIC BISHOPS, THE ANGLICAN PRIMATE, THE

United Church and the various churches involved in Project North.

I THINK ALL CANADIANS WERE MOVED BY THE STRONG SUPPORT WE RECEIVED FROM POPE JOHN PAUL II ON HIS TRIP TO CANADA.

CANADIANS INCREASINGLY REALIZE THAT THE WORLD COMMUNITY IS WATCHING THE SITUATION IN CANADA.

CANADIAN TREATMENT OF INDIANS AND INUIT WAS CRITICIZED IN THE United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities Last Year.

MADAME ERIKA DEAS, THE CHAIRWOMAN OF THE UNITED NATIONS
WORKING GROUP ON INDIGENOUS POPULATIONS SPOKE IN QUEBEC CITY
RECENTLY.

SHE STATED THE VIEW THAT,

THE INTERNATIONAL LAW PRINCIPLE OF THE SELF-DETERMINATION OF PEOPLES,

APPLIED TO INDIGENOUS PEOPLES.

THESE INTERNATIONAL DEVELOPMENTS CONTINUE.

WE ACTIVELY SUPPORT THE WORLD COUNCIL OF INDIGENOUS PEOPLES

A BODY CREATED TEN YEARS AGO UNDER THE LEADERSHIP OF INDIGENOUS PEOPLE FROM CANADA.

OUR CAUSE IS JUST.

THAT IS WHY WE HAVE THIS SUPPORT FROM THE PEOPLE OF CANADA.

That is why we have support from Canadian organizatons like the Labour Congress and the churches.

THAT IS WHY THERE IS INTERNATIONAL SUPPORT.

BUT LET ME TURN TO OUR DEALINGS WITH THE FEDERAL AND PROVINCIAL GOVERNMENTS.

BECAUSE EVERYONE KNOWS WE ARE HAVING PROBLEMS IN THIS PROCESS OF FIRST MINISTERS' CONFERENCES.

WE WANT THIS CONFERENCE TO SUCCEED.

BUT WE HAVE TO BE FRANK ABOUT BASIC PRINCIPLES AND THE GOALS OF THE FIRST NATIONS.

AND ABOUT THE PROBLEMS FIRST NATIONS HAVE WITH THIS FORUM.

FIRST, I MUST SAY THAT THIS IS NOT THE ONLY FORUM OR THE ONLY PROCESS OPEN TO THE FIRST NATIONS.

OUR BASIC NATIONAL RIGHTS,

AS THE FIRST NATIONS,

INVOLVE A DIRECT RELATIONSHIP WITH THE CROWN REPRESENTED BY

CANADA HAS THE CONSTITUTIONAL AUTHORITY TO ENTER INTO
TREATIES OR AGREEMENTS WITH THE FIRST NATIONS

AND THOSE TREATIES CAN BE MODIFIED OR EXPANDED.

New treaties or "renovation" agreements restating the spirit and terms of treaties all come within the protection of section 35 of the <u>Constitution Act</u> of 1982.

THIS CONTINUING BILATERAL TREATY PROCESS CAN DEFINE AND EXPAND THE TREATY RIGHTS THAT ARE RECOGNIZED AND AFFIRMED BY THE CONSTITUTION OF CANADA.

While I am dealing with this issue of the Bilateral and treaty processes, Prime Minister, let me mention the Prairie Treaty Nations Alliance.

THIS BODY REPRESENTS FIRST NATIONS WITHIN WESTERN CANADA

WHICH HAVE TREATIES AND TREATY RIGHTS AS PART OF THEIR DIRECT RELATIONSHIP WITH THE CROWN.

THESE FIRST NATIONS HAVE REQUESTED DIRECT PARTICIPATION IN THIS CONFERENCE.

THE ASSEMBLY OF FIRST NATIONS SUPPORTS THIS REQUEST.

As mutually agreed, at the approporate time, Prime Minister,

I will be inviting the Prairie Treaties Nations Alliance

PARTICIPANTS TO MAKE THEIR STATEMENTS AT THIS TABLE

TURNING NOW, TO THE PROPOSALS OF THE GOVERNMENT OF CANADA FOR A CONSTITUTIONAL AMENDMENT ON SELF-GOVERNMENT,

THE FIRST NATIONS HAVE AN <u>INHERENT</u> AND DISTINCT RIGHT TO SELF-GOVERNMENT.

LET THE CANADIAN PEOPLE KNOW PRECISELY WHERE YOU STAND -

- Where you stand on the <u>Fundamental Principle</u>, of the distinct right of the First Nations to self-government.
- AND THEN, WE'LL DISCUSS THE DETAILS.

WE NEED THAT COMMITMENT FROM CANADA AND THE PROVINCES AND WE NEED IT NOW.

WE HAVE BEEN EXCLUDED FROM SHARING BENEFITS OF OUR TRADITIONAL LANDS.

WE HAVE BEEN EXCLUDED FROM RESOURCE SHARING AND EQUALIZATION.

On the one hand we can say that there has been some progress but,

ON THE OTHER HAND

WE CAN ECHO THE WORDS OF MR. JUSTICE SEATON OF THE BRITISH COLUMBIA COURT OF APPEAL ABOUT THE CLAIMS OF THE FIRST NATIONS:

"The claims have not been dealt with and found invalid. They have not been dealt with at all."

SADLY, THAT IS STILL LARGELY THE SITUATION.

THAT IS WHY I SPEAK WITH SUCH URGENCY.

THAT IS WHY I OFFER AN OPPORTUNITY TO BEGIN AGAIN.

To begin to work out the Canada-First Nations relationships that will benefit <u>all</u> Canadians.

I SAID EARLIER THAT THE FIRST STEP WAS THE ENTRENCHMENT OF OUR INHERENT RIGHT TO <u>Indian</u> government of First Nations.

AND, WHAT ARE THE NEXT STEPS?

YOU NEED LOOK NO FARTHER, PRIME MINISTER, THAN SOME OF THE NEW PROCESSES YOU HAVE INITIATED TO FIND SUITABLE MODELS.

THE DEPUTY PRIME MINISTER IS CURRENTLY HEADING SEVERAL TASK FORCES THAT ARE REVIEWING FEDERAL PROGRAMS.

You have initiated, together with the provinces, a process of re-defining and perhaps re-ordering the economic foundations of this country.

I invite you, after having entrenched our <u>inherent</u> right to <u>Indian</u> Government of First Nations, to Join with those

GOVERNMENTS IN BILATREAL UNDERTAKINGS TO IDENTIFY AND AGREE UPON:

CANADA-FIRST NATIONS-POLITICAL RELATIONSHIPS;

- FISCAL ARRANGEMENTS;
- Economic Relationships;
- CONSTITUTIONAL RELATIONSHIPS;
- RESOURCE REVENUE-SHARING ARRANGEMENTS;
- TREATY IMPLEMENTATION PROCESSES;
- BILATERAL RELATIONSHIPS; AND

I SAID, AT THE OUTSET, THAT FIRST NATIONS WERE FEELING AN INTENSE SENSE OF URGENCY.

I WANT TO CONCLUDE BY ASSURING YOU THAT WE FEEL, JUST AS
INTENSELY, A SENSE OF OPTIMISM WITH THE PROSPECT THAT A NEW
GOVERNMENT MAY BE WILLING TO TAKE UP THE OPPORTUNITY, AND THE
CHALLENGE,

To Join with us in initiating a new era in Canada-First Nations relations.

WE ARE READY TO BEGIN TODAY.

WE WILL AWAIT YOUR RESPONSE.

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CA1 Z 2 -0 52

FIRST MINISTERS' CONFERENCE
ON
ABORIGINAL CONSTITUTIONAL MATTERS

4.30

### Opening Remarks

Native Council of Canada



OTTAWA, Ontario April 2 and 3, 1985



### NATIVE COUNCIL OF CANADA

OPENING REMARKS

FIRST MINISTERS' CONFERENCE
ON
ABORIGINAL CONSTITUTIONAL MATTERS

APRIL 2, L985



MR. CHAIRMAN, FIRST MINISTERS, FELLOW DELEGATES:

OUR VICE-RESIDENTS, MR. HARRY DANIELS AND MR. DWIGHT DOREY, TOGETHER WITH THE PRESIDENTS OF OUR PROVINCIAL AND TERRITORIAL ORGANIZATIONS FROM ACROSS CANADA, JOIN ME IN WELCOMING YOU AND PREMIER MILLER TO OUR DELIBERATIONS. WE ALSO WELCOME THOSE FIRST MINISTERS WE HAVE BEEN WORKING WITH OVER THE PAST SEVERAL YEARS.

WE INTEND TO PROCEED DIRECTLY TO THE IMPORTANT BUSINESS OF THIS CONFERENCE.

ON BEHALF OF THE NATIVE COUNCIL OF CANADA, I WANT TO THANK YOU FOR PROVIDING ALL OF THE PARTIES WITH THE OFFICIAL FEDERAL POSITION ONE DAY IN ADVANCE OF THIS CONFERENCE SO AS TO REMOVE SURPRISES. I ALSO WANT TO EXPRESS OUR APPRECIATION FOR THE SINCERE AND EXTENSIVE EFFORTS OF YOUR MINISTERS AND OFFICIALS OVER THE LAST FEW MONTHS IN CREATING AN ENVIRONMENT IN WHICH WE HAVE ALL ATTEMPTED TO WORK TOGETHER. I ALSO WELCOME THE OBJECTIVE YOU OUTLINED IN YOUR LETTER TO ME OF YESTERDAY.

DESPITE THESE EXPRESSIONS OF THANKS AND APPRECIATION, I MUST REGRETFULLY STATE THAT YOUR PROPOSAL FALLS SIGNIFICANTLY SHORT OF MEETING THE NEEDS OF MY CONSTITUENTS. IT IS A PROPOSAL FROM WHICH WE CAN START, ON WHICH WE CAN BUILD. OUR BASIC REACTION CAN BE PUT SIMPLY. OUR SURVIVAL AND FUTURE DEVELOPMENT DEPENDS UPON THREE THINGS: (1) A SECURE LAND BASE FOR OUR PEOPLES; (2) THE RECOGNITION OF THE EQUALITY OF ALL ABORIGINAL PEOPLES UNDER SECTION 91(24) OF THE CONSTITUTION ACT, 1867; AND (3) THE ENTRENCHMENT OF A BASIC AND CLEAR STATEMENT RECOGNIZING OUR RIGHT TO SELF-GOVERNMENT FREE FROM EXCESSIVE RESTRAINTS AND RESTRICTIONS.

AS FAR AS THE AGENDA ITEMS ARE CONCERNED, MR. PRIME MINISTER, THE NATIVE COUNCIL OF CANADA CAN STATE ITS POSITION QUITE SIMPLY. AS THE REPRESENTATIVES OF THE LARGEST NUMBER OF ABORIGINAL PEOPLE IN CANADA, THE METIS AND NON-STATUS INDIANS, WE ARE DEDICATED TO ACHIEVING A CLEAR AND SPECIFIC ACCOMMODATION FOR OUR PEOPLE IN THE CONSTITUTION.

YOU HAVE NO DOUBT BEEN INFORMED THAT WE ARE COMMITTED
TO ACHIEVING AN ACCORD IN THE NEXT TWO DAYS WHICH WILL RESULT
IN A CONSTITUTIONAL AMENDMENT WHICH SPECIFIES THE RIGHT OF

SELF-GOVERNMENT FOR ABORIGINAL PEOPLES. WE UNDERSTAND AND AGREE THAT IT WILL BE NECESSARY TO ESTABLISH THE ACTUAL ON-THE-GROUND INSTITUTIONS OF THIS SELF-GOVERNMENT THROUGH NEGOTIATED AGREEMENTS. BUT WE WANT TO BE ABSOLUTELY CERTAIN, MR. CHAIRMAN, THAT YOU UNDERSTAND WHAT THIS MEANS FOR THE CONSTITUENCY OF THE NATIVE COUNCIL. SOME OF OUR PEOPLE WILL BE REINSTATED TO RESERVES, AND MAY ACHIEVE ACCESS TO THEIR RIGHT TO SELF-GOVERNMENT IN THAT WAY. BUT THAT WILL ACCOUNT FOR A SMALL FRACTION OF OUR PEOPLE. IN FACT, MOST OF US WILL REQUIRE A DIFFERENT APPROACH. FOR SOME THIS WILL MEAN A SECURE LAND BASE FOR THEIR COMMUNITIES. FOR THOSE WHO DO NOT NOW HAVE A LAND BASE, AND PARTICULARLY THOSE IN URBAN COMMUNITIES, OTHER APPROACHES ARE NEEDED TO ENSURE THEIR ACCESS TO THE RIGHT OF SELF GOVERNMENT INCLUDING GUARANTEED REPRESENTATION IN PARLIAMENT AND LEGISLATURES.

WE WILL BE DISCUSSING AGAIN THE ISSUE OF SEXUAL EQUALITY.
WHILE WE WOULD STILL PREFER TO REVIVE THE ORIGINAL WORDING
THAT WAS AGREED TO IN 1983, WE ARE CERTAINLY WILLING TO LOOK
AT ALTERNATIVES. BUT WE MUST ALERT YOU TO THE FACT THAT WE,
ALONG WITH OUR BROTHERS AND SISTERS AT THIS END OF THE TABLE,

DO NOT WANT THE CONFERENCE TO BOG DOWN ON THIS ISSUE. IF WE CANNOT ALL QUICKLY REACH A SOLUTION, WE WOULD AGREE TO SEE THE SEXUAL EQUALITY ITEM TABLED TO THE NEXT FMC.

MR. CHAIRMAN, THE NATIVE COUNCIL MUST CONTINUE TO PLACE PRIORITY ON THE ISSUE OF FEDERAL RESPONSIBILITY FOR ALL ABORIGINAL PEOPLE UNDER SECTION 91(24) OF THE CONSTITUTION ACT OF 1867. FOR US THIS IS THE CRITICAL ISSUE: EQUALTIY OF ALL ABORIGINAL PEOPLES. WE HAVE AGREED NOT TO DWELL UNNECESSARILY ON THE ISSUE AT THIS CONFERENCE, BUT WE WILL CERTAINLY BE RAISING IT, BOTH HERE AND LATER IN THE ONGOING PROCESS.

THAT ONGOING PROCESS IS, ITSELF, AN AGENDA ITEM WE MUST CONSIDER CAREFULLY. WE MUST LOOK AT THE JOB AHEAD OF US IN TERMS OF ADDRESSING THE ISSUES LISTED IN THE 1983 ACCORD, AND DESIGN A WAY TO DEAL WITH THEM IN A SHORT TWO-YEAR PERIOD. THE NATIVE COUNCIL BELIEVES THAT A FURTHER FIRST MINISTERS CONFERENCE WILL BE NECESSARY IN 1986 IF WE EXPECT TO ACCOMPLISH OUR TASK BY 1987. IN ANY CASE, WE WILL INSIST THAT THE POSSIBILITY OF AN FMC 86 BE ENTERTAINED IN THE MEETINGS WE WILL HAVE IN THE COMING MONTHS.

THE NEXT AGENDA YOU PROPOSED DEALS WITH THE FORM AN ACCORD MIGHT TAKE. OUR POSITION IN THIS MATTER MUST BE CLEARLY UNDERSTOOD. WE MUST ACHIEVE AN AMENDMENT ON THE RIGHT OF SELF-GOVERNMENT OR THIS CONFERENCE WILL HAVE FAILED. WE ARE CONVINCED THAT YOU, WITH THE COOPERATION OF FIRST MINISTERS' WILL NOT ALLOW THIS TO HAPPEN.

SUCCESS IS POSSIBLE AND NECESSARY. THIS CAN BE ACHIEVED
THROUGH AN AMENDMENT THAT ENTRENCHES THE RIGHT OF SELFGOVERNMENT FOR ALL ABORIGINAL PEOPLES - WHETHER THEY HAVE A
LAND BASE TODAY OR NOT. THIS RIGHT MUST BE DECLARED IN A
SIMPLE, STRAIGHTFORWARD WAY WITHOUT THE RESTRICTIONS OF HAVING
IMPLEMENTATION DEPEND ON RATIFICATION BY PROVINCIAL LEGISLATURES.
THE ONLY OTHER ELEMENT NECESSARY IN AN AMENDMENT IS TO
AUTOMATICALLY ENTRENCH ANY AGREEMENTS NEGOIATED WITH PROVINCIAL
AND FEDERAL GOVERNMENTS AS SOON AS THEY ARE CONCLUDED.

ANYTHING LESS, MR. PRIME MINISTER, WILL PERPETUATE
THE VERY INJUSTICES AND INEQUALITIES THAT THIS CONFERENCE WAS
SUPPOSE TO CORRECT FOR THE METIS AND NON-STATUS INDIANS OF
CANADA.

IN CLOSING, MR. PRIME MINISTER, I INVITE YOU TO TELL US WHERE IN THE ACCORD YOU HAVE DISTRIBUTED TO US THE RIGHTS TO SELF-GOVERNMENT OF THE METIS AND NON-STATUS INDIANS HAVE BEEN MET.

THANK YOU



CA1 Z 2 -C 52

DOCUMENT : 800-20/019

TRADUCTION DU SECRÉTARIAT

CONFÉRENCE DES PREMIERS MINISTRES
SUR
LES QUESTIONS CONSTITUTIONNELLES
INTÉRESSANT LES AUTOCHTONES

Notes pour l'allocution du chef national

Assemblée des premières nations



OTTAWA (Ontario)
Les 2 et 3 avril 1985



## FRATERNITÉ DES INDIENS DU CANADA

ASSEMBLÉE DES PREMIÈRES NATIONS 47, rue Clarence, pièce 300, Édifice Atrium Ottawa (Ontario) KlN 9Kl (613) 236-0673 TÉLEX 053-3202

NOTES POUR L'ALLOCUTION D'OUVERTURE PRONONCÉE PAR LE CHEF NATIONAL

À LA CONFÉRENCE DES PREMIERS MINISTRES DE 1985 SUR

LES QUESTIONS CONSTITUTIONNELLES INTÉRESSANT LES AUTOCHTONES

ASSEMBLÉE DES PREMIÈRES NATIONS LE 2 AVRIL 1985

À VÉRIFIER AU MOMENT DE L'ALLOCUTION OTTAWA (ONTARIO)



MONSIEUR LE PRÉSIDENT, MESSIEURS LES PREMIERS MINISTRES, CHEFS, ANCIENS ET CITOYENS DES PREMIÈRES NATIONS, CITOYENS ET CITOYENNES DU CANADA,

(QUELQUES COURTES PHRASES EN CRI)

LES PREMIÈRES NATIONS FONT BON ACCUEIL À L'OCCASION QUI LEUR EST DONNÉE AUJOURD'HUI DE SE RETROUVER UNE FOIS DE PLUS AUTOUR DE CETTE TABLE DE DÉLIBÉRATION

TOUT COMME NOS ANCÊTRES ONT FAIT BON ACCUEIL AUX VÔTRES

IL Y A PLUS DE OUATRE CENTS ANS.

NOS ANCÊTRES NE SE SONT PAS COMPRIS,

MAIS LES NÔTRES ONT MALGRÉ TOUT ACCUEILLI LES VÔTRES.

ILS CROYAIENT QUE TÔT OU TARD LES GÉNÉRATIONS SUCCESSIVES APPRENDRAIENT À SE COMPRENDRE ET À VIVRE EN HARMONIE.

JUSQU'À MAINTENANT, NOUS AVONS ÉCHOUÉ

ET NOUS NOUS PRÉSENTONS ENCORE UNE FOIS À CETTE TABLE

POUR TENTER DE VOUS FAIRE COMPRENDRE L'INTENSITÉ DU SENTIMENT D'URGENCE QUI ANIME LES PREMIÈRES NATIONS.

PENDANT PLUS DE OUATRE CENTS ANS,

DANS NOS LANGUES ET DANS VOS LANGUES,

NOUS N'AVONS PU VOUS AMENER À NOUS COMPRENDRE.

J'AI PARLE D'UN SENTIMENT D'URGENCE INTENSE, CAR

NOTRE INCAPACITE A COMMUNIQUER A MARQUE DE PROFONDES CICATRICES LES VIES DES CITOYENS DES PREMIÈRES NATIONS.

LES STATISTIQUES ILLUSTRENT LES TERRIBLES CONDITIONS DE VIE AUXOUELLES ONT ÉTÉ CONTRAINTS NOS PEUPLES.

LE TAUX DE MORTALITE INFANTILE EST DE 4 Å 5 FOIS PLUS ÉLEVÉ QUE LA MOYENNE NATIONALE.

LE TAUX DE MORTS VIOLENTES DE NOTRE PEUPLE EST PLUS ÉLEVE QUE CELUI DE LA PLUPART DES PAYS DU MONDE.

NOS TAUX DE CHÔMAGE SONT ATTERRANTS.

ET POURTANT NOTRE PEUPLE A SURVÉCU TANT BIEN QUE MAL ET A LA VOLONTÉ DE TRAVAILLER.

LA OÙ LA PERTE DE NOS RESSOURCES N'A PAS DÉTRUIT NOTRE ÉCONOMIE, NOUS SUBVENONS AUX BESOINS DE NOS FAMILLES;

NOS TABLES SONT BIEN GARNIES;

NOUS VIVONS AVEC DIGNITE.

NOUS NE VOULONS PAS ÊTRE DÉPENDANTS.

NOUS NE NOUS OPPOSONS PAS AU DÉVELOPPEMENT.

MAIS NOUS VOULONS UN DÉVELOPPEMENT QUI RESPECTE NOS CULTURES ET NOS TRADITIONS.

- OUI RESPECTE L'ENVIRONNEMENT
- QUI FAIT DE NOUS DES PARTENAIRES DANS L'ÉCONOMIE CANADIENNE.

N'EST-IL PAS ÉVIDENT POUR TOUS QUE CES BUTS NE PEUVENT ÊTRE
ATTEINTS À MOINS QUE NOS DROITS FONDAMENTAUX NE SOIENT RECONNUS
ET RESPECTÉS?

JE ME VOIS DANS L'OBLIGATION DE VOUS CITER CES TRISTES STATISTIQUES, ET JE N'AI D'AUTRE CHOIX QUE DE VOUS RAPPELER QUE LE SYSTÈME COLONIALISTE CONTINUE DE VIOLER NOS DROITS.

MÊME LES TRIBUNAUX LE DISENT AU CANADA ET AUX CANADIENS.

EN NOVEMBRE DERNIER, LA COUR SUPRÊME DU CANADA A STATUÉ SUR LE CAS GUERIN.

LES AVOCATS DU GOUVERNEMENT DU CANADA ONT SOUTENU QUE LES INDIENS
DE MUSQUEAM N'AVAIENT AUCUN DROIT RELATIVEMENT AUX TERRES DE
LEUR RÉSERVE.

ILS ONT AVANCÉ QUE LA COURONNE AURAIT PU VENDRE LES TERRES ET LES MAISONS DES INDIENS ET EMPOCHER L'ARGENT.

LA COUR SUPRÊME A DIT NON.

ELLE A RECONNU CE QUE NOUS AVIONS TOUJOURS DIT:

QUE NOUS AVIONS DES DROITS FONCIERS INTRINSÈQUES.

DES DROITS QUI NE PROCÈDENT PAS DE VOS LOIS MAIS BIEN DES NÔTRES.

ET LA COUR SUPRÊME A EN OUTRE DIT QUE CELA VALAIT AUTANT POUR LES RÉSERVES QUE POUR LES TERRES ANCESTRALES NON CÉDÉES.

PUIS RÉCEMMENT ENCORE, DANS L'AFFAIRE DE L'ÎLE MEARES,

LA COLOMBIE-BRITANNIQUE ET MACMILLAN BLOEDEL ONT PRÉTENDU QUE LES INDIENS AVAIENT TARDÉ À FAIRE VALOIR LEURS DROITS

ET NE POUVAIENT MAINTENANT RÉCLAMER LA PROTECTION DES DROITS RELATIFS À LEURS TERRES ET À LEURS RESSOURCES.

LA COUR D'APPEL DE LA COLOMBIE-BRITANNIQUE A FAIT OBSERVER QU'AU
CONTRAIRE LES INDIENS PRÉSENTAIENT LEURS REVENDICATIONS AVEC
INSISTANCE DEPUIS DES GÉNÉRATIONS.

MONSIEUR LE JUGE SEATON A DIT :

"ON NOUS DEMANDE, <u>A L'EXEMPLE D'AUTRES PARTIES</u>,
D'IGNORER CE PROBLÈME. JE NE SUIS PAS DISPOSÉ A
LE FAIRE."

LA COLOMBIE-BRITANNIQUE ET MACMILLAN BLOEDELL ONT DE PLUS SOUTENU
QUE LA RECONNAISSANCE DES REVENDICATIONS INDIENNES CAUSERAIT DE
LA CONFUSION ET DE L'INCERTITUDE CHEZ LES AUTRES CITOYENS
CANADIENS.

LE JUGE MACFARLANE N'ÉTAIT PAS DE CET AVIS.

IL A DIT QUE LES REVENDICATIONS NE SURPRENDRAIENT PERSONNE - ET QUE LA POPULATION S'ATTENDAIT À DES NÉGOCIATIONS ET À UN RÈGLEMENT.

NE SERAIT-IL PAS NORMAL QUE LES GOUVERNEMENTS SOIENT À L'ÉCOUTE DES TRIBUNAUX?

ASSURÉMENT, EN QUALITÉ DE PRINCIPAUX LÉGISLATEURS DU PAYS, LES PREMIERS MINISTRES SE DOIVENT DE RESPECTER LES TRIBUNAUX CANADIENS.

ET IL NE S'AGIT PAS SEULEMENT DES TRIBUNAUX.

LES CANADIENS CONNAISSENT NOTRE PROPOS ET NOUS APPUIENT.

ILS NOUS EN FONT PART DIRECTEMENT, ET NOUS EN AVONS EU
CONFIRMATION PAR UN SONDAGE GALLUP EFFECTUÉ AUPRÈS DU PUBLIC
VOILÀ UN AN.

D'APRÈS CE SONDAGE, LA MAJORITÉ DES CANADIENS CROIENT QUE NOUS AVONS LE DROIT DE NOUS ADMINISTRER ET D'ADMINISTRER NOS RESSOURCES.

NOUS SOMMES RECONNAISSANTS AUX ORGANISMES ET AUX DIRIGEANTS QUI
ONT APPUYÉ PUBLIQUEMENT LES PREMIÈRES NATIONS:

LE CONGRÈS DU TRAVAIL DU CANADA, LE CANADIAN ETHNOCULTURAL
COUNCIL, LES ÉVÊQUES CATHOLIQUES, LE PRIMAT ANGLICAN, L'ÉGLISE
UNIE ET LES DIVERSES ÉGLISES PARTICIPANT AU PLAN NORDIQUE.

JE CROIS QUE TOUS LES CANADIENS ONT ÉTÉ TOUCHÉS PAR L'IMPORTANT

APPUI QUE NOUS A ACCORDE SA SAINTETE JEAN-PAUL II LORS DE SA VISITE AU CANADA.

LES CANADIENS SE RENDENT DE PLUS EN PLUS COMPTE QUE LA COMMUNAUTÉ MONDIALE SUIT DE PRÈS NOTRE SITUATION.

LE TRAITEMENT RÉSERVÉ PAR LE CANADA AUX INDIENS ET AUX INUIT A ÉTÉ CRITIQUE L'AN DERNIER AUX NATIONS UNIES PAR LA SOUS-COMMISSION DE LA LUTTE CONTRE LES MESURES DISCRIMINATOIRES ET DE LA PROTECTION DES MINORITÉS.

M<sup>me</sup> ERIKA DEAS, PRÉSIDENTE DU GROUPE DE TRAVAIL DES NATIONS UNIES SUR LES POPULATIONS AUTOCHTONES, A RÉCEMMENT PRONONCÉ UN DISCOURS À QUÉBEC.

ELLE A DÉCLARÉ OUE

LE PRINCIPE DE L'AUTODÉTERMINATION DES PEUPLES, QUI TIENT DU DROIT INTERNATIONAL, S'APPLIQUAIT AUX PEUPLES AUTOCHTONES.

ET CETTE ÉVOLUTION SE POURSUIT SUR LE PLAN INTERNATIONAL.

NOUS APPUYONS FERMEMENT LE CONSEIL MONDIAL DES PEUPLES
INDIGÈNES, ORGANISATION CRÉÉE IL Y A DIX ANS SOUS LA DIRECTION
DES PEUPLES AUTOCHTONES DU CANADA.

NOTRE CAUSE EST JUSTE.

C'EST POUROUOI NOUS AVONS L'APPUI DU PEUPLE CANADIEN.

C'EST POURQUOI NOUS AVONS L'APPUI D'ORGANISMES CANADIENS COMME LE CONGRÈS DU TRAVAIL ET LES ÉGLISES.

C'EST POUROUOI NOUS AVONS UN APPUI INTERNATIONAL.

PERMETTEZ-MOI MAINTENANT DE TRAITER DE NOS RAPPORTS AVEC LES GOUVERNEMENTS FÉDÉRAL ET PROVINCIAUX,

CAR, TOUT LE MONDE LE SAIT, LES CONFÉRENCES DES PREMIERS MINISTRES NOUS POSENT DES PROBLÈMES.

NOUS VOULONS QUE CETTE CONFÉRENCE SOIT COURONNÉE DE SUCCÈS.

MAIS NOUS DEVONS AFFIRMER FRANCHEMENT LES PRINCIPES FONDAMENTAUX ET LES BUTS DES PREMIÈRES NATIONS.

NOUS DEVONS AUSSI TRAITER FRANCHEMENT DES PROBLÈMES QUE POSE CETTE TRIBUNE AUX PREMIÈRES NATIONS.

EN PREMIER LIEU, JE DOIS DIRE QUE CE N'EST PAS LA SEULE TRIBUNE NI LE SEUL PROCESSUS À LA PORTÉE DES PREMIÈRES NATIONS.

LES DROITS NATIONAUX FONDAMENTAUX

DES PREMIÈRES NATIONS

SUPPOSENT DES RAPPORTS DIRECTS AVEC LA COURONNE, REPRÉSENTÉE PAR LE CANADA.

LE CANADA A LE POUVOIR CONSTITUTIONNEL DE PASSER DES TRAITÉS OU DES ACCORDS AVEC LES PREMIÈRES NATIONS

ET CES TRAITÉS PEUVENT ÊTRE MODIFIÉS OU ÉLARGIS.

LES NOUVEAUX TRAITÉS OU LES ACCORDS REPRENANT L'ESPRIT ET LES DISPOSITIONS DE TRAITÉS SONT PROTÉGÉS PAR L'ARTICLE 35 DE LA LOI CONSTITUTIONNELLE DE 1982.

CE PROCESSUS CONCERNANT LES TRAITÉS BILATÉRAUX PEUT PERMETTRE DE DÉFINIR ET D'ÉLARGIR LES DROITS ISSUS DE TRAITÉS QUE RECONNAÎT ET CONFIRME LA CONSTITUTION DU CANADA.

PUISQUE NOUS PARLONS DES TRAITÉS BILATÉRAUX, MONSIEUR LE PREMIER MINISTRE, PERMETTEZ-MOI DE DIRE UN MOT DE LA PRAIRIE TREATIES NATIONS ALLIANCE.

CET ORGANISME REPRÉSENTE LES PREMIÈRES NATIONS DE L'OUEST CANADIEN QUI ONT DES TRAITÉS ET DES DROITS ISSUS DE TRAITÉS QUI FONT PARTIE DE LEURS RAPPORTS DIRECTS AVEC LA COURONNE.

CES PREMIÈRES NATIONS ONT DEMANDÉ DE PARTICIPER DIRECTEMENT À CETTE CONFÉRENCE.

L'ASSEMBLÉE DES PREMIÈRES NATIONS APPUIE LEUR DEMANDE.

TEL QUE NOUS SOMMES CONVENUS, AU MOMENT APPROPRIÉ, MONSIEUR LE PREMIER MINISTRE, J'INVITERAI LES PARTICIPANTS DE LA PRAIRIE TREATIES NATIONS ALLIANCE À FAIRE UNE DÉCLARATION À CETTE TABLE.

PASSONS MAINTENANT A LA PROPOSITION DU GOUVERNEMENT DU CANADA RELATIVE À UNE MODIFICATION CONSTITUTIONNELLE SUR L'AUTONOMIE GOUVERNEMENTALE.

L'AUTONOMIE GOUVERNEMENTALE.

C'EST UN DES DROITS DE LA PERSONNE LES PLUS FONDAMENTAUX.

POUR LES PREMIÈRES NATIONS, CE DROIT EXISTAIT AVANT QUE LE PAYS

NE SOIT COLONISÉ ET IL EXISTE TOUJOURS. C'ÉTAIT UN PRINCIPE

INHÉRENT À TOUTES LES TRANSACTIONS INTERVENUES ENTRE LES NATIONS

COLONISATRICES ET LES PREMIÈRES NATIONS. IL A ÉTÉ RECONNU DANS

LA PROCLAMATION ROYALE ET, PAR LA SUITE, DANS LES TRAITÉS ET LES RELATIONS BILATÉRALES ENTRE LES INDIENS ET LE GOUVERNEMENT DU CANADA.

C'EST LE PREMIER DES DROITS MENTIONNÉS DANS LE PACTE

INTERNATIONAL RELATIF AUX DROITS CIVILS ET POLITIQUES DONT LE

CANADA A ÉTÉ L'UN DES SIGNATAIRES EN 1976.

IL A ÉTÉ RECONNU PAR LE PARLEMENT DANS LE RAPPORT DE L'ANNÉE
DERNIÈRE DU COMITÉ PENNER QUI ÉTAIT COMPOSÉ DE REPRÉSENTANTS DE
TOUS LES PARTIS.

LES CANADIENS ACCEPTENT FONDAMENTALEMENT POUR EUX-MÊMES LE PRINCIPE DE L'AUTONOMIE GOUVERNEMENTALE.

SELON LE SONDAGE GALLUP DONT IL A DÉJÀ ÉTÉ QUESTION, IL EST EVIDENT QUE LES CANADIENS ACCEPTENT COMME ÉTANT UN DROIT FONDAMENTAL DES PREMIÈRES NATIONS LE PRINCIPE DES INSTITUTIONS GOUVERNEMENTALES INDIENNES.

JE NE PEUX EXPRIMER PLUS CLAIREMENT COMMENT CE PRINCIPE EST ÉVIDENT ET FONDAMENTAL. ET POURTANT, LA PLUPART DES GOUVERNEMENTS PROVINCIAUX S'Y OPPOSENT. CERTAINES PRÉOCCUPATIONS DE L'ASSEMBLÉE DES PREMIÈRES NATIONS ONT ÉTÉ BIEN COMPRISES, COMME LE DÉMONTRE LA POSITION FÉDÉRALE ACTUELLE.

PAR CONTRE, NOUS N'AVONS PAS RÉUSSI À FAIRE VALOIR NOTRE PRÉOCCUPATION LA PLUS IMPORTANTE.

TOUTE RELATION AVEC LE CANADA DOIT COMMENCER PAR LA
RECONNAISSANCE FONDAMENTALE ET SANS RÉSERVE DE CE DROIT DANS LA
CONSTITUTION.

SOYONS FRANCS.

SEULE UNE <u>RECONNAISSANCE FONDAMENTALE</u> DE NOS DROITS INHÉRENTS À
L'AUTONOMIE GOUVERNEMENTALE INCITERA LES GOUVERNEMENTS CANADIENS
À AGIR DANS UN DÉLAI SATISFAISANT AFIN DE RÉSOUDRE LES QUESTIONS
PARTICULIÈRES DES CHAMPS DE COMPÉTENCE RESPECTIFS ET DES
RELATIONS FINANCIÈRES AVEC LES PREMIÈRES NATIONS.

JE DEMANDE AUX PREMIERS MINISTRES PROVINCIAUX D'ÊTRE FRANCS ET
HONNÊTES AVEC LES PREMIÈRES NATIONS REPRÉSENTÉES ICI PAR
L'ASSEMBLÉE DES PREMIÈRES NATIONS.

FAITES CONNAÎTRE VOTRE POSITION EXACTE À LA POPULATION CANADIENNE

- VOTRE POSITION CONCERNANT LE <u>PRINCIPE FONDAMENTAL</u> DU DROIT DISTINCT DES PREMIÈRES NATIONS À L'AUTONOMIE GOUVERNEMENTALE,
- ET ENSUITE, NOUS DISCUTERONS DES DÉTAILS. IL FAUT QUE LE CANADA ET LES PROVINCES PRENNENT CET ENGAGEMENT ET QU'ILS LE PRENNENT DES MAINTENANT.

NOUS AVONS ÉTÉ TENUS À L'ÉCART DU PARTAGE DES AVANTAGES DE NOS TERRES ANCESTRALES.

NOUS AVONS ÉTÉ TENUS À L'ÉCART DU PARTAGE DES RESSOURCES NATURELLES ET DE LA PÉRÉQUATION.

D'UNE PART, NOUS POUVONS DIRE QU'IL Y A EU DU PROGRÈS, MAIS

D'AUTRE PART,

NOUS POUVONS REPRENDRE LES PAROLES DU JUGE SEATON DE LA COUR
D'APPEL DE LA COLOMBIE-BRITANNIQUE CONCERNANT LES REVENDICATIONS
DES PREMIÈRES NATIONS:

"LES REVENDICATIONS N'ONT PAS ÉTÉ ÉTUDIÉES ET TROUVÉES

SANS FONDEMENT. ELLES N'ONT TOUT SIMPLEMENT PAS ÉTÉ

ÉTUDIÉES."

MALHEUREUSEMENT, LA SITUATION EST ENCORE EN GRANDE PARTIE LA MÊME.

C'EST POURQUOI JE SUIS AUSSI CATÉGORIQUE.

C'EST POURQUOI J'OFFRE LA POSSIBILITÉ DE RECOMMENCER.

DE COMMENCER À ÉTABLIR ENTRE LE CANADA ET LES PREMIÈRES NATIONS DES RELATIONS DONT BÉNÉFICIERONT TOUS LES CANADIENS.

J'AI MENTIONNÉ PLUS TÔT QUE LA PREMIÈRE ÉTAPE ÉTAIT L'INSCRIPTION DANS LA CONSTITUTION DU DROIT INHÉRENT DES PREMIÈRES NATIONS AUX INSTITUTIONS GOUVERNEMENTALES INDIENNES.

QUELLES SONT LES ÉTAPES SUIVANTES? VOUS N'AVEZ QU'À REGARDER,
MONSIEUR LE PREMIER MINISTRE, CERTAINS DES NOUVEAUX MÉCANISMES

QUE VOUS AVEZ MIS SUR PIED POUR TROUVER DES MODÈLES CONVENABLES.

LE VICE-PREMIER MINISTRE DIRIGE ACTUELLEMENT PLUSIEURS GROUPES DE TRAVAIL OUI EXAMINENT LES PROGRAMMES FEDERAUX.

VOUS AVEZ MIS SUR PIED, DE CONCERT AVEC LES PROVINCES, UN MÉCANISME EN VUE DE REDÉFINIR ET, PEUT-ÊTRE, DE RÉORGANISER LES FONDEMENTS ÉCONOMIQUES DU PAYS.

JE VOUS INVITE, APRÈS QUE VOUS AUREZ INSCRIT DANS LA CONSTITUTION

LE DROIT INHÉRENT DES PREMIÈRES NATIONS AUX INSTITUTIONS

GOUVERNEMENTALES INDIENNES, À COLLABORER AVEC LES REPRÉSENTANTS

DE CES INSTITUTIONS AFIN D'EN VENIR À DES ENTENTES SUR LES POINTS

SUIVANTS:

LES RELATIONS POLITIQUES ENTRE LE CANADA ET LES PREMIÈRES NATIONS;

- LES MODALITES FINANCIÈRES;
- LES RELATIONS ÉCONOMIQUES;
- LES RELATIONS CONSTITUTIONNELLES:
- LES MODALITÉS DE PARTAGE DES RECETTES PROVENANT DES RESSOURCES NATURELLES;
- LES MÉCANISMES DE MISE EN OEUVRE DES TRAITÉS;
- LES RELATIONS BILATERALES.

J'AI PARLE AU DEBUT DE L'INTENSITE DU SENTIMENT D'URGENCE QUI ANIME LES PREMIÈRES NATIONS. JE VOUDRAIS CONCLURE EN DISANT QUE NOUS NOUS SENTONS AUSSI
INTENSÉMENT OPTIMISTES DEVANT LA PERSPECTIVE QU'UN NOUVEAU
GOUVERNEMENT VOUDRA SAISIR L'OCCASION - C'EST UN DÉFI À RELEVER DE SE JOINDRE À NOUS AFIN D'INSTAURER UNE NOUVELLE ÈRE DANS LES
RELATIONS ENTRE LE CANADA ET LES PREMIÈRES NATIONS.

NOUS SOMMES PRÊTS À COMMENCER DES AUJOURD'HUI.

NOUS ATTENDONS VOTRE RÉPONSE.

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## FIRST MINISTERS' CONFERENCE

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ON

ABORIGINAL CONSTITUTIONAL ISSUES

APRIL 2/3, 1985

PROVINCE OF MANITOBA

OPENING REMARKS



BY

HONOURABLE HOWARD PAWLEY, Q.C.

PREMIER OF MANITOBA

OTTAWA, ONTARIO

APRIL 2, 1985



THE CENTRAL ISSUE AT THIS HISTORIC MEETING IS ABORIGINAL SELF-GOVERNMENT.

FOR THE ABORIGINAL PEOPLES OF CANADA THAT ISSUE ABOVE ALL OTHERS HAS COME TO REPRESENT THEIR ASPIRATIONS TO BE ABLE, FINALLY, TO BREAK THE LAST RESTRAINTS OF THE COLONIAL PAST.

CANADA IS A SIGNATORY TO INTERNATIONAL COVENANTS WHICH

DECLARE THE RIGHT OF INDIGENOUS PEOPLES TO SELF-GOVERNMENT. THE

TIME HAS COME TO HONOUR THAT COMMITMENT BY A CLEAR

CONSTITUTIONAL DECLARATION OF THAT RIGHT.

SECTION 35(1) OF THE CONSTITUTION ACT, 1982 RECOGNIZES AND AFFIRMS THE EXISTING RIGHTS OF CANADA'S ABORIGINAL PEOPLES.

IN MANITOBA'S VIEW THOSE RIGHTS NECESSARILY INCLUDE THE RIGHT TO SELF-GOVERNMENT, HOWEVER, IN ORDER TO REMOVE ANY UNCERTAINTY OF THAT RIGHT, THE MOST IMPORTANT OF ALL ABORIGINAL RIGHTS, MUST NOW BE SEPARATELY IDENTIFIED AND DECLARED IN FULFILLMENT OF OUR OBLIGATION UNDER SECTION 37 OF THE CHARTER.

THAT HAS BEEN OUR VIEW FROM THE BEGINNING OF THIS PROCESS.

A VIEW, LET ME SAY, WHICH WE HAVE DEVELOPED IN CLOSE

CO-OPERATION WITH THE ABORIGINAL PEOPLES WHO HAVE BEEN PART OF

OUR DELEGATION FROM THE BEGINNING OF THE PROCESS.

ON MARCH 15, 1983 MANITOBA TABLED A POSITION PAPER, ENTITLED STATEMENT OF PRINCIPLES.

IN THAT PAPER WE NOTED AS FOLLOWS:

THE SPECIAL STATUS OF ABORIGINAL PEOPLES IN CANADIAN
SOCIETY STEMS FROM THE FACT OF THEIR OCCUPATION USE AND
COLLECTIVE OWNERSHIP OF LANDS IN WHAT IS NOW CANADA PRIOR
TO EUROPEAN SETTLEMENT AND THE APPLICATION OF EUROPEAN LAW.
THE ABORIGINAL PEOPLES EXISTED AS DISTINCT NATIONS AND
EXERCISED SELF-GOVERNING POWERS OVER THEIR TERRITORY AND
OVER THEIR RELIGIOUS, CULTURAL, SOCIAL, ECNOMIC AND
POLITICAL LIFE. THEY ALSO EXERCISED CONTROL OVER LIVING
AND NATURAL RESOURCES OF THE LAND THEY INHABITED. THE
TREATIES AND MODERN AGREEMENTS CANNOT BE CONSTRUED AS
CONSTITUTING A GENERAL EXTINGUISHMENT OF FUNDAMENTAL
ABORIGINAL RIGHTS.

FROM THAT PREMISE WE WENT ON TO DECLARE THAT THESE RIGHTS

OUGHT TO INCLUDE THE "...RIGHT TO SELF-GOVERNMENT SUBJECT TO THE

CANADIAN CONSTITUTION AND WITHIN THE CANADIAN CONFEDERATION".

IN THAT AND IN SUBSEQUENT DOCUMENTS WE HAVE SUGGESTED OTHER PARAMETERS FOR ABORIGINAL SELF-GOVERNMENT. THESE PARAMETERS INCLUDE FEDERAL FISCAL RESPONSIBILITY AND THE NEED TO PROVIDE ABORIGINAL GOVERNMENTS WITH A CONSTITUTIONALLY PROTECTED MECHANISM FOR FISCAL TRANSFERS SO THAT THEY CAN PROVIDE NATIVE

CANADIANS WITH SERVICES "REASONABLY COMPARABLE TO THOSE AVAILABLE TO CANADIANS GENERALLY, TAKING INTO ACCOUNT THE SPECIAL SOCIAL, CULTURAL AND ECONOMIC NEEDS OF ABORIGINAL PEOPLES".

AT THIS MEETING WE RE-AFFIRM OUR PREVIOUSLY DECLARED POSITIONS ON ABORIGINAL SELF-GOVERNMENT.

WE ARE READY TO OFFER OUR SUPPORT IN PRINCIPLE TO THE
FEDERAL POSITION TABLED TODAY. WE HAVE SOME RESERVATIONS AND
QUALIFICATIONS WHICH WE WILL OFFER AS THIS DISCUSSION DEVELOPS.

PRIME MINISTER, THERE ARE THOSE WHO HESITATE AND WHO SAY IN EFFECT "FIRST DEFINE AND THEN ENSHRINE". IN OUR CONSIDERED VIEW THERE IS NO SINGLE DEFINITION OF SELF-GOVERNMENT WHICH CAN ENCOMPASS THE VARYING NEEDS, CONDITIONS, ECONOMICS, CULTURAL AND HISTORICAL BACKGROUNDS OF CANADA'S ABORIGINAL PEOPLES. THE INUIT, INDIAN AND METIS PEOPLE OF CANADA DIFFER NOT ONLY BETWEEN THEMSELVES BUT OFTEN WITHIN THEMSELVES. IF SELF-GOVERNMENT MEANS ANYTHING IT MUST MEAN THE RIGHT OF PARTICULAR GROUPS, COMMUNITIES AND NATIONS TO PARTICIPATE IN THE DEFINITION OF THE CHARTER OF THEIR COLLECTIVE EXISTENCE. IN OUR VIEW IT WOULD BE WRONG FOR EXISTING NON-NATIVE GOVERNMENTS TO SEEK TO IMPOSE A SINGULAR AND UNIVERSALLY-APPLICABLE DEFINITION OF SELF-GOVERNMENT ON CANADA'S ABORIGINAL PEOPLE, INDEED, NONE EXISTS.

THE FEDERAL PROPOSAL WHICH COMBINES A MUCH-NEEDED

DECLARATION OF THE RIGHT TO SELF-GOVERNMENT WITH A COMMITMENT TO 
NEGOTIATE AND SUBSEQUENTLY DEFINE BY A SERIES OF MULTI-LATERAL 
NEGOTIATIONS HAS MERIT AND WE SUPPORT IT IN PRINCIPLE.

I CONCLUDE, PRIME MINISTER, BY STATING THAT THE ABORIGINAL PEOPLE OF CANADA HAVE WAITED, IN EFFECT, FOR CLOSE TO FOUR HUNDRED YEARS. THEIR EXISTING RIGHT TO SELF-GOVERNMENT SHOULD BE DECLARED NOW.

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OPENING REMARKS

UF

THE HONOURABLE WILLIAM R. BENNETT

PREMIER OF BRITISH COLUMBIA

TO THE

FIRST MINISTERS' CONFERENCE

UN

ABORIGINAL CONSTITUTIONAL MATTERS



OTTAWA, ONTARIO
APRIL 2, 1985

(CHECK AGAINST DELIVERY)



MR. PRIME MINISTER, FELLOW PREMIERS, A SPECIAL WELCOME TO THE NEW LEADER OF YUKON, REPRESENTATIVES OF THE NORTHWEST TERRITORIES, AND DISTINGUISHED REPRESENTATIVES OF THE ABORIGINAL PEOPLES.

LET ME ALSO EXTEND A SPECIAL WELCOME TO YOU,
MR. CHAIRMAN, TO THIS YOUR FIRST CONSTITUTIONAL
CONFERENCE.

I AM SURE YOU WILL FIND THESE TWO DAYS TO BE A WORTHY CHALLENGE TO YOUR CONSIDERABLE NEGOTIATING AND MEDIATING SKILLS. THE ISSUES BEFORE US ARE COMPLEX BUT, AS ALWAYS IN ANY NEGOTIATION, THE POSSIBILITY FOR COMPROMISE EXISTS. I WISH YOU WELL AS CHAIRMAN IN THIS AND SUCCEEDING CONFERENCES.

You are, of course, not only Chairman of the Conference, but also the head of the federal government delegation and its chief spokesman. I mention this, because it is necessary to recall two factors of importance. First, that the existing constitutional responsibility for Indians and Lands reserved for the Indians lies exclusively with the federal government.

SECONDLY, ANY PROPOSAL FOR CONSTITUTIONAL CHANGE GOES NOWHERE, UNDER THE AMENDING FORMULA, WITHOUT THE FULL SUPPORT OF THE FEDERAL GOVERNMENT.

I, of course, once again wish to add a special welcome to the members of the four national organizations that represent the Aboriginal Peoples of Canada. I am pleased to see how many of their numbers have come from my province of British Columbia.

This is the third in a series of four first Ministers' Conferences to include on its agenda issues of concern to the Aboriginal Peoples of Canada. In specific terms the agenda contains those subjects put forward by the aboriginal representatives several years ago and not dealt with conclusively at last year's Conference.

I THINK WE WOULD DO WELL TO REMIND OURSELVES

THAT CONSTITUTIONAL CHANGE SHOULD NEVER BE CONSIDERED TO

BE AN END UNTO ITSELF. THE TASK THAT WE ALL SHARE AROUND

THIS TABLE IS TO TAKE THE NECESSARY STEPS TO PRESERVE AND ENRICH THE NATIVE CULTURES OF THIS COUNTRY AND, ABOVE ALL, TO PROVIDE NATIVE PEOPLE THE OPPORTUNITIES — BE THEY ECONOMIC, EDUCATION OR HEALTH AND OTHER AMENITIES — THAT MOST OTHER CANADIANS ENJOY. SHORTCOMINGS IN THE PAST HAVE NOT NECESSARILY BEEN CREATED BY THE EXISTING CONSTITUTION NOR CAN THEY NECESSARILY BE ALLEVIATED BY CONSTITUTIONAL AMENDMENT. A RESHAPING OF ATTITUDES, AND A RESHAPING OF GOVERNMENT POLICIES AND LEGISLATIVE INITIATIVES MAY PROVE TO BE AS IMPORTANT, IF NOT MORE IMPORTANT, IN ADDRESSING NATIVE ASPIRATIONS THAN CONSTITUTIONAL CHANGE ITSELF.

MR. CHAIRMAN, OUR GOVERNMENT HAS BEEN INVOLVED WITH THE FEDERAL GOVERNMENT IN DISCUSSING A RANGE OF CLAIMS. WE HAVE BEEN INVOLVED IN RESOURCE REVENUE-SHARING AND ALLOCATION AGREEMENTS AS WELL. SO WHILE WE ARE FOCUSSING TODAY AND TOMORROW ON THE CONSTITUTION, LET US BEAR IN MIND THAT WITHIN OUR RESPECTIVE JURISDICTIONS WE HAVE, THE INDIANS HAVE, EXISTING OPPORTUNITIES TO ENHANCE THE MANNER IN WHICH WE LIVE AND WORK TOGETHER.

BRITISH COLUMBIA SUPPORTS THE EXTENSION OF

EQUALITY RIGHTS TO BOTH NATIVE MEN AND WOMEN. AT THE SAME

TIME, HOWEVER, WE ARE CONSCIOUS OF THE INTERESTS

AND CONCERNS OF OUR NATIVE COMMUNITIES IN THIS MATTER, AND

APPROACH THE QUESTION OF CONSTITUTIONAL ENTRENCHMENT WITH

THE GREATEST SENSITIVITY.

BRITISH COLUMBIA ALSO SUPPORTS THE CONCEPT OF

WELL ESTABLISHED INDIAN COMMUNITIES HAVING MORE DIRECT

CONTROL OVER THEIR OWN AFFAIRS. WE ARE THEREFORE

GENERALLY SUPPORTIVE OF MOVES TO MAKE EXISTING INDIAN

COMMUNITIES MORE AUTONOMOUS AND LESS SUBJECT TO THE

DICTATES OF A BUREAUCRACY IN SOME CASES THOUSANDS OF MILES

AWAY FROM THE INDIAN COMMUNITY IN QUESTION.

THE CONFERENCE MAY BE INTERESTED TO KNOW THAT
THE PROVINCE OF BRITISH COLUMBIA TOOK ACTION AS EARLY AS
1969 TO ACHIEVE PRACTICAL AND WORKABLE MEASURES OF LOCAL
AUTONOMY FOR INDIAN COMMUNITIES.

I REFER TO AN AMENDMENT TO THE MUNICIPAL ACT OF
BRITISH COLUMBIA WHICH PERMITS THE RESIDENTS SITUATED ON A
RESERVE TO BE INCORPORATED AS A VILLAGE MUNICIPALITY.

SIXTY PERCENT OF VOTING MEMBERS MUST AGREE. THE LETTERS PATENT WHICH WOULD BE ISSUED BY THE PROVINCIAL CABINET WOULD SPELL OUT IN FULL THE DEGREE OF LOCAL AUTONOMY IN THE CIRCUMSTANCES.

MR. CHAIRMAN, AT LAST YEAR'S CONFERENCE BRITISH
COLUMBIA WAS NOT IN AGREEMENT WITH CONSTITUTIONALIZING THE
NOTION OF SELF-GOVERNMENT FOR OUR NATIVE PEOPLES. UUR
POSITION AT THAT TIME, AS IT IS NOW, IS "DEFINE THEN SIGN"
-- NOT THE REVERSE. BUT, TO MISINTERPRET THIS POSITION AS
INDICATIVE OF OPPOSITION TO THE NOTION ITSELF -- AS SOME
DID LAST YEAR -- IS, I BELIEVE, BOTH INACCURATE AND
UNFAIR.

SINCE LAST WE MET, I SENSE THERE HAS BEEN SOME
PROGRESS TOWARD A SOMEWHAT GREATER UNDERSTANDING BY ALL OF
US OF THE ISSUES AND THE IMPLICATIONS ARISING FROM CERTAIN
SUBJECTS ON THE AGENDA. I NOTE WITH PARTICULAR INTEREST,
PRIME MINISTER, THAT YOUR MINISTERS AND OFFICIALS HAVE
MADE SOME PROGRESS IN DEFINING THE CONCEPT OF
SELF-GOVERNMENT IN THE RESOLUTION PROPOSED-- BY WAY OF
SPECIFYING THAT ANY INSTITUTIONS OF NATIVE SELF-GOVERNMENT
MUST BE ACCOMMODATED WITHIN THE CONTEXT OF OUR FEDERAL
SYSTEM.

NEVERTHELESS, I WOULD BE LESS THAN CANDID IF I DID NOT INDICATE THAT, FROM BRITISH COLUMBIA'S PERSPECTIVE, THE RESOLUTION THAT HAS BEEN PREPARED FOR THIS CONFERENCE FALLS SHORT OF THAT MINIMAL LEVEL OF PRECISION THAT, IN MY VIEW, IS PRE-REQUISITE TO ENTRENCHMENT AS PART OF THE FUNDAMENTAL LAW OF THIS COUNTRY. A GREAT DEAL MORE CLARIFICATION AND/OR NEGOTIATION IS REQUIRED BEFORE A DECISION CAN BE MADE WHETHER PROVISIONS SHOULD BE ADDED TO THE CONSTITUTION. I WOULD ADD MY VOICE TO THOSE WHO BELIEVE WE SHOULD MAKE HASTE WITH PRUDENCE. PERHAPS IF WE CANNOT DEFINE FULLY WHAT NATIVE SELF-GOVERNMENT IS, WE SHOULD TURN OUR MINDS TO AGREEING WHAT NATIVE SELF-GOVERNMENT IS NOT. TO MAKE THIS PROCESS MORE CONCRETE AND LESS THEORETICAL, IT WOULD BE PREFERABLE TO PURSUE CONCRETE NEGOTIATIONS AND TO DEVELOP SPECIFIC FRAMEWORK LEGISLATION PRIOR TO, AND NOT SUBSEQUENT TO CONSTITUTIONAL ENTRENCHMENT.

I MAKE THIS SUGGESTION BECAUSE BRITISH COLUMBIA CONTINUES TO BELIEVE IT WOULD BE UNWISE TO ENTRENCH IN OUR CONSTITUTION PROVISIONS THAT ARE UNDEFINED, ILL-DEFINED OR NOT ACCEPTABLE TO THE VARIOUS PARTIES THAT HAVE AN INTEREST IN THESE MATTERS.

AT THE SAME TIME, I WANT TO MAKE IT CLEAR THAT BRITISH COLUMBIA DOES NOT REJECT OUT OF HAND THE ENTRENCHMENT IN OUR CONSTITUTION OF ONE OR MORE FORMS OF SELF-GOVERNING INSTITUTIONS. Mr. CHAIRMAN, THERE IS A NEW MOOD IN THE COUNTRY -- A MOOD OF RECONCILIATION AND PARTNERSHIP. IN NO SMALL MEASURE, THIS NEW MOOD IS DUE TO YOUR LEADERSHIP, AND THE TONE YOU HAVE SET AS PRIME MINISTER. YOU ARE WELL KNOWN, PRIME MINISTER, FOR YOUR NEGOTIATION EXPERIENCE AND MEDIATIVE SKILLS. IN THE LANGUAGE OF NEGOTIATION YOU CAN TAKE THIS STATEMENT, PRIME MINISTER, AS A SIGNAL -- A SIGNAL THAT MY MINISTERS AND 1 ARE PREPARED TO PARTICIPATE WITH YOU AND OTHERS AT THIS CONFERENCE AND BEYOND IN THE SEARCH FOR MUTUALLY AGREEABLE LANGUAGE TO DEFINE WHAT THE CONCEPT OF SELF-GOVERNMENT IS, WHAT IT IS NOT, ITS IMPLICATIONS AND WHETHER OR NOT IT SHOULD BE ENTRENCHED IN THE CONSTITUTION AT THIS TIME.



Traduction du Secrétariat

DOCUMENT: 800-20/020

CONFÉRENCE DES PREMIERS MINISTRES

SUR

LES QUESTIONS CONSTITUTIONNELLES

INTERESSANT LES AUTOCHTONES

LES 2 ET 3 AVRIL 1985

ALLOCUTION D'OUVERTURE

DE L'HONORABLE HOWARD PAWLEY, C.R.

PREMIER MINISTRE DU MANITOBA



OTTAWA (Ontario)
Le 2 avril 1985



L'AUTONOMIE GOUVERNEMENTALE DES AUTOCHTONES EST LA OUESTION CENTRALE À LA PRÉSENTE RÉUNION HISTORIQUE.

LES PEUPLES AUTOCHTONES DU CANADA EN SONT VENUS À MISER D'ABORD ET AVANT TOUT SUR CE PRINCIPE POUR FINALEMENT ÊTRE EN MESURE DE BRISER LES DERNIÈRES CHAÎNES DU PASSÉ COLONIAL.

LE CANADA A SIGNÉ DES PACTES INTERNATIONAUX QUI
AFFIRMENT LE DROIT DES PEUPLES AUTOCHTONES À L'AUTONOMIE
GOUVERNEMENTALE. LE TEMPS EST VENU DE RESPECTER CET ENGAGEMENT
EN INSCRIVANT CLAIREMENT CE DROIT DANS LA CONSTITUTION.

LE PARAGRAPHE 35(1) DE LA LOI CONSTITUTIONNELLE DE 1982
RECONNAÎT ET CONFIRME LES DROITS EXISTANTS DES PEUPLES
AUTOCHTONES DU CANADA.

LE MANITOBA ESTIME QUE LE DROIT À L'AUTONOMIE

GOUVERNEMENTALE FAIT NÉCESSAIREMENT PARTIE DES DROITS EN

QUESTION. TOUTEFOIS, L'ÉLIMINATION DE TOUTE INCERTITUDE ET LA

RESPONSABILITÉ QUI NOUS INCOMBE EN VERTU DE L'ARTICLE 37 DE LA

CHARTE EXIGENT QUE NOUS DÉTERMINIONS ET AFFIRMIONS SÉPARÉMENT CE

DROIT QUI EST LE PLUS IMPORTANT DE TOUS LES DROITS DES

AUTOCHTONES.

C'EST LÀ NOTRE POSITION DEPUIS LE DÉBUT DE L'OPÉRATION EN COURS.

NOUS L'AVONS ÉTABLIE EN COLLABORATION ÉTROITE AVEC LES AUTOCHTONES QUI FONT D'AILLEURS PARTIE DE NOTRE DÉLÉGATION DEPUIS LE TOUT DÉBUT.

LE 15 MARS 1983, LE MANITOBA DEPOSAIT UN DOCUMENT INTITULE "ENONCE DE PRINCIPES" DANS LEQUEL NOUS FAISIONS LA DECLARATION SUIVANTE:

"LE STATUT SPECIAL QUE DÉTIENNENT LES AUTOCHTONES DANS
LA SOCIÉTÉ CANADIENNE PROVIENT DU FAIT QU'ILS
OCCUPAIENT LES TERRES ET EN ÉTAIENT COLLECTIVEMENT
PROPRIÉTAIRES DANS CE QUI S'APPELLE MAINTENANT LE
CANADA, AVANT LA VENUE DES EUROPÉENS ET L'APPLICATION
DES LOIS EUROPÉENNES. LES PEUPLES AUTOCHTONES
EXISTAIENT EN TANT QUE NATIONS DISTINCTES ET EXERÇAIENT
LES POUVOIRS D'UNE ADMINISTRATION AUTONOME SUR LEURS
TERRITOIRES AINSI QUE SUR LEUR VIE RELIGIEUSE,
CULTURELLE, SOCIO-ÉCONOMIQUE ET POLITIQUE. ILS ÉTAIENT
AUSSI MAÎTRES DES RESSOURCES FAUNIQUES ET NATURELLES
DES TERRES QU'ILS HABITAIENT... ON NE PEUT PAS...
DÉDUIRE QUE (LES) TRAITÉS ET ENTENTES (CONTEMPORAINES)
ABOLISSENT GLOBALEMENT LES DROITS FONDAMENTAUX DES

DE LA, NOUS AVONS DECLARE QUE CES DROITS DEVRAIENT

COMPRENDRE LE "... DROIT À UNE ADMINISTRATION AUTONOME AU SEIN DE

LA CONFEDERATION CANADIENNE, ET CONFORMEMENT AUX DISPOSITIONS DE

LA CONSTITUTION CANADIENNE".

DANS CE DOCUMENT ET DANS CEUX QUI ONT SUIVI, NOUS AVONS PROPOSE D'AUTRES PARAMÈTRES POUR LA MISE EN OEUVRE DE L'AUTONOMIE GOUVERNEMENTALE DES AUTOCHTONES. CES PARAMÈTRES COMPRENNENT LA RESPONSABILITÉ FINANCIÈRE DU GOUVERNEMENT FÉDERAL ET LA NÉCESSITE DE CRÉER DES INSTITUTIONS GOUVERNEMENTALES AUTOCHTONES ASSORTIES D'UN MÉCANISME PROTÈGÉ DANS LA CONSTITUTION ET PERMETTANT DE FOURNIR AUX CANADIENS AUTOCHTONES DES SERVICES "RAISONNABLEMENT COMPARABLES À CEUX QUI SONT OFFERTS À L'ENSEMBLE DES CANADIENS, EN TENANT COMPTE DES BESOINS SOCIO-ÉCONOMIQUES ET CULTURELS SPÉCIAUX DES PEUPLES AUTOCHTONES.

NOUS REAFFIRMONS AUJOURD'HUI NOTRE POSITION CONCERNANT
L'AUTONOMIE GOUVERNEMENTALE DES AUTOCHTONES.

NOUS SOMMES DISPOSES À APPUYER EN PRINCIPE LA POSITION ENONCÉE AUJOURD'HUI PAR LE GOUVERNEMENT FÉDÉRAL. NOUS AVONS TOUTEFOIS CERTAINES RÉSERVES ET RESTRICTIONS QUE NOUS EXPOSEKONS AU COURS DES DÉLIBÉRATIONS.

MONSIEUR LE PREMIER MINISTRE DU CANADA, CERTAINS HESITENT ET DISENT QU'IL FAUDRAIT D'ABORD DEFINIR LES DROITS ET LES INSCRIRE ENSUITE DANS LA CONSTITUTION. APRÈS MORE REFLEXION. NOUS CROYONS QU'IL N'EXISTE, DE L'AUTONOMIE GOUVERNEMENTALE, AUCUNE DEFINITION QUI PUISSE À ELLE SEULE ENGLOBER TOUTE LA GAMME DES BESOINS, DES CONDITIONS, DES ECONOMIES ET DES ANTECEDENTS CULTURELS ET HISTORIQUES DES PEUPLES AUTOCHTONES DU CANADA. IL EXISTE DES DIFFERENCES ENTRE LES INUIT, LES INDIENS ET LES METIS DE NOTRE PAYS, MAIS IL Y EN A ÉGALEMENT SOUVENT ENTRE LES MEMBRES D'UN MÊME GROUPE. POUR OUE L'AUTONOMIE GOUVERNEMENTALE AIT VRAIMENT UN SENS, ELLE DOIT COMPRENDRE LE DROIT DE CHACUN DES GROUPES, COLLECTIVITES ET NATIONS À PARTICIPER À L'ELABORATION DE LA CHARTE QUI DOIT RÉGIR SON EXISTENCE COLLECTIVE. À NOTRE AVIS, LES GOUVERNEMENTS NON AUTOCHTONES EN PLACE AURAIENT TORT DE TENTER D'IMPOSER AUX PEUPLES AUTOCHTONES DU CANADA UNE DÉFINITION UNIQUE, APPLICABLE A TOUS, DE L'AUTONOMIE GOUVERNEMENTALE, CAR IL N'EN EXISTE AUCUNE.

LA PROPOSITION FÉDÉRALE, QUI COMPREND UNE DÉCLARATION

TRES ATTENDUE DU DROIT À L'AUTONOMIE GOUVERNEMENTALE ET UN

ENGAGEMENT À NÉGOCIER ET À ENONCER CE DROIT PAR LA SUITE AU COURS

D'UNE SERIE DE NÉGOCIATIONS MULTILATÉRALES, EST VALABLE ET NOUS

L'APPUYONS EN PRINCIPE.

POUR CONCLURE, MONSIEUR LE PREMIER MINISTRE,

J'AJOUTERAI QUE LES PEUPLES AUTOCHTONES SONT DANS L'ATTENTE, EN

FAIT, DEPUIS PRÈS DE QUATRE CENTS ANS. IL EST IMPÉRIEUX DE

CONFIRMER MAINTENANT LEUR DROIT EXISTANT À L'AUTONOMIE

GOUVERNEMENTALE.



C/1 2 / -C 52

ALLOCUTION D'OUVERTURE PRONONCÉE PAR

L'HONORABLE WILLIAM R. BENNETT,

PREMIER MINISTRE DE LA COLOMBIE-BRITANNIQUE,

A LA CONFERENCE DES PREMIERS MINISTRES

SUR LES QUESTIONS CONSTITUTIONNELLES

INTÉRESSANT LES AUTOCHTONES



OTTAWA (Ontario)
Le 2 avril 1985

(A VERIFIER AU MOMENT DE L'ALLOCUTION)



MONSIEUR LE PREMIER MINISTRE DU CANADA, MESSIEURS LES PREMIERS MINISTRES DES PROVINCES, MES SALUTATIONS SPÉCIALES AU NOUVEAU CHEF DU YUKON, DISTINGUÉS REPRÉSENTANTS DES TERRITOIRES DU NORD-OUEST ET DES PEUPLES AUTOCHTONES,

J'AIMERAIS TOUT D'ABORD ADRESSER À MONSIEUR LE
PRÉSIDENT UN MOT SPÉCIAL DE BIENVENUE PUISQUE CETTE CONFÉRENCE
CONSTITUTIONNELLE EST LA PREMIÈRE QU'IL DIRIGE.

CES DEUX JOURS DE SEANCE METTRONT SANS DOUTE À BONNE ÉPREUVE VOS TALENTS DE NÉGOCIATEUR ET DE MÉDIATEUR. LES PROBLÈMES QUE NOUS CHERCHONS À RÉSOUDRE SONT COMPLEXES, MAIS, COMME DANS TOUTE NÉGOCIATION, LES COMPROMIS SONT TOUJOURS POSSIBLES. JE VOUS SOUHAITE BEAUCOUP DE SUCCÈS À TITRE DE PRÉSIDENT DE LA PRÉSENTE CONFÉRENCE ET DES CONFÉRENCES ULTÉRIEURES.

NATURELLEMENT, VOUS N'ÊTES PAS SEULEMENT PRÉSIDENT DE LA CONFÉRENCE, MAIS ÉGALEMENT CHEF ET PORTE-PAROLE PRINCIPAL DE LA DÉLÉGATION FÉDÉRALE. SI JE MENTIONNE CE FAIT, C'EST QUE JE TIENS À RAPPELER DEUX CHOSES IMPORTANTES. LA PREMIÈRE EST QUE LA COMPÉTENCE RELATIVE AUX INDIENS ET AUX TERRES QUI LEUR SONT RÉSERVÉES INCOMBE ACTUELLEMENT DE FAÇON EXCLUSIVE AU GOUVERNEMENT FÉDÉRAL EN VERTU DE LA CONSTITUTION. EN SECOND LIEU, TOUTE PROPOSITION VISANT À MODIFIER LA CONSTITUTION, SUIVANT LA PROCEDURE DE MODIFICATION, EST VOUÉE À L'ÉCHEC SI ELLE NE RECUEILLE L'APPUI TOTAL DE VOTRE GOUVERNEMENT.

J'ADRESSE ENCORE UN MOT SPÉCIAL DE BIENVENUE AUX

MEMBRES DES QUATRE ORGANISATIONS NATIONALES QUI REPRÉSENTENT LES

PEUPLES AUTOCHTONES DU CANADA. JE SUIS HEUREUX DE VOIR QU'ILS

SONT VENUS EN GRAND NOMBRE DE MA PROVINCE.

LA PRÉSENTE CONFÉRENCE EST LA TROISIÈME D'UNE SÉRIE DE QUATRE CONFÉRENCES DES PREMIERS MINISTRES À L'ORDRE DU JOUR DESQUELLES SONT PLACEES LES QUESTIONS QUI INTÉRESSENT LES PEUPLES AUTOCHTONES DU CANADA. PLUS PRÉCISEMENT, ON RETROUVE À L'ORDRE DU JOUR LES QUESTIONS SOULEVEES PAR DES REPRÉSENTANTS AUTOCHTONES IL Y A PLUSIEURS ANNÉES ET QU'ON N'A PAS RÉGLÉES POUR DE BON À LA CONFÉRENCE DE L'AN DERNIER.

MODIFICATIONS CONSTITUTIONNELLES NE PEUVENT ÊTRE CONSIDERÉES

COMME UNE FIN EN SOI. LE BUT QUE NOUS NOUS SOMMES TOUS FIXÉ

CONSISTE À PRENDRE LES MESURES REQUISES POUR PROTÈGER LES

CULTURES AUTOCHTONES DE NOTRE PAYS ET EN FAVORISER

L'ÉPANOUISSEMENT. IL S'AGIT D'OFFRIR AUX AUTOCHTONES LES MÊMES

POSSIBILITÉS QUE CELLES DONT JOUISSENT LA PLUPART DES AUTRES

CANADIENS EN MATIÈRE D'ÉCONOMIE, D'ÉDUCATION, DE SANTÉ ET DE

COMMODITÉS. LA CONSTITUTION ACTUELLE N'EST PAS FORCÉMENT LA

CAUSE DES INJUSTICES PASSÉES ET IL N'EST PAS CERTAIN QUE LES

MODIFICATIONS CONSTITUTIONNELLES PERMETTRONT DE LES ATTÉNUER. IL

EST TOUT AUSSI IMPORTANT, SINON PLUS, DE CHANGER LES ATTITUDES,
LES POLITIQUES GOUVERNEMENTALES ET LES INTERVENTIONS LÉGISLATIVES
TOUCHANT LES ASPIRATIONS DES AUTOCHTONES QUE DE MODIFIER LA
CONSTITUTION PROPREMENT DITE.

MONSIEUR LE PRÉSIDENT, NOTRE GOUVERNEMENT A DISCUTÉ DE TOUTE UNE SÉRIE DE REVENDICATIONS AVEC LE GOUVERNEMENT FÉDÉRAL.

NOUS AVONS ÉGALEMENT CONCLU DES ACCORDS DE PARTAGE ET DE DISTRIBUTION DES RECETTES PROVENANT DE L'EXPLOITATION DES RESSOURCES. DONC, MÊME SI LES DISCUSSIONS D'AUJOURD'HUI ET DE DEMAIN PORTERONT ESSENTIELLEMENT SUR LA CONSTITUTION, IL NE FAUT PAS OUBLIER QUE, DANS NOS ADMINISTRATIONS RESPECTIVES, TOUS, Y COMPRIS LES INDIENS, ONT LA POSSIBILITÉ D'AMÉLIORER LEURS CONDITIONS DE VIE ET DE TRAVAIL AU SEIN DE LA COLLECTIVITÉ.

LA COLOMBIE-BRITANNIQUE EST EN FAVEUR DU PRINCIPE DE
L'ÉGALITÉ DES HOMMES ET DES FEMMES AUTOCHTONES. NOUS SOMMES
NÉANMOINS CONSCIENTS DES INTÉRÊTS ET DES PRÉOCCUPATIONS DE NOS
COLLECTIVITÉS AUTOCHTONES À CET ÉGARD, ET C'EST AVEC BEAUCOUP DE
CIRCONSPECTION QUE NOUS ABORDONS LA QUESTION DE L'INSCRIPTION DES
DROITS À L'ÉGALITÉ DANS LA CONSTITUTION.

LA COLOMBIE-BRITANNIQUE APPUIE ÉGALEMENT LE PRINCIPE
SELON LEQUEL LES COLLECTIVITÉS INDIENNES ÉTABLIES DOIVENT POUVOIR
PRENDRE PLUS DIRECTEMENT EN MAIN LEURS PROPRES AFFAIRES. NOUS

SOMMES DONC FAVORABLES, EN GÉNÉRAL, AUX ACTIONS VISANT À
ACCROÎTRE L'AUTONOMIE DES COLLECTIVITÉS INDIENNES ACTUELLES ET À
LES LIBÉRER EN PARTIE DE L'AUTORITÉ D'ADMINISTRATIONS DONT ELLES
SONT PARFOIS SÉPARÉES PAR DES MILLIERS DE MILLES.

IL NE SERA SANS DOUTE PAS INDIFFÉRENT AUX PARTICIPANTS

A LA CONFÉRENCE DE SAVOIR QUE LA COLOMBIE-BRITANNIQUE A PRIS DES

DISPOSITIONS DES 1969 POUR DONNER DANS LES FAITS UNE CERTAINE

AUTONOMIE AUX COLLECTIVITÉS INDIENNES.

JE CITE POUR EXEMPLE UNE MODIFICATION DE LA LOI
PROVINCIALE SUR LES MUNICIPALITÉS, QUI PERMET AUX HABITANTS D'UNE
RÉSERVE DE SE CONSTITUER EN MUNICIPALITÉ. LA DEMANDE DOIT ÊTRE
APPROUVÉE PAR 60 P. 100 DES MEMBRES AYANT DROIT DE VOTE. LES
LETTRES PATENTES DÉLIVRÉES PAR LE CABINET PROVINCIAL ÉTABLISSENT
EN DÉTAIL LE DEGRÉ D'AUTONOMIE LOCALE ATTRIBUÉE DANS CHAQUE CAS.

MONSIEUR LE PRÉSIDENT, À LA CONFÉRENCE DE L'ANNÉE

DERNIÈRE, LA COLOMBIE-BRITANNIQUE N'A PAS SOUSCRIT À L'IDÉE

D'INSCRIRE DANS LA CONSTITUTION LE PRINCIPE DE L'AUTONOMIE

GOUVERNEMENTALE POUR NOS PEUPLES AUTOCHTONES. À CE MOMENT, TOUT

COMME MAINTENANT, NOTRE POSITION ÉTAIT QU'IL FALLAIT DÉFINIR ET

SIGNER ENSUITE ET NON L'INVERSE. TOUTEFOIS, J'ESTIME QU'IL EST

INEXACT ET INJUSTE D'INTERPRÉTER CETTE POSITION - COMME CERTAINS

L'ONT FAIT L'AN DERNIER - COMME SIGNIFIANT QUE NOUS NOUS OPPOSONS

AU PRINCIPE MÊME.

DEPUIS NOTRE DERNIÈRE RENCONTRE, JE SENS QUE NOUS AVONS TOUS RÉUSSI À MIEUX COMPRENDRE LES PROBLÈMES ET LES RÉPERCUSSIONS QUI DÉCOULENT DE CERTAINS ARTICLES À L'ORDRE DU JOUR. MONSIEUR LE PREMIER MINISTRE, JE REMARQUE AVEC BEAUCOUP D'INTÉRÊT, DANS LA RÉSOLUTION PROPOSÉE, QUE VOS MINISTRES ET VOS FONCTIONNAIRES ONT ACCOMPLI DES PROGRÈS DANS LA DÉFINITION DU PRINCIPE DE L'AUTONOMIE GOUVERNEMENTALE, EN CE SENS QU'ILS Y PRÉCISENT QUE L'AUTONOMIE GOUVERNEMENTALE DES AUTOCHTONES DOIT ÊTRE ASSURÉE DANS LE CADRE DE NOTRE RÉGIME FÉDÉRAL.

J'OMETTAIS DE SIGNALER QUE, DU POINT DE VUE DE LA

COLOMBIE-BRITANNIQUE, LA RÉSOLUTION RÉDIGÉE POUR LA PRÉSENTE

CONFÉRENCE N'ATTEINT PAS LE NIVEAU MINIMAL DE PRÉCISION QUI, À

MON AVIS, EST ESSENTIEL POUR PERMETTRE L'INCORPORATION DANS LA

LOI FONDAMENTALE DU PAYS. IL FAUDRA APPORTER DES PRÉCISIONS ET

TENIR D'AUTRES NÉGOCIATIONS AVANT DE POUVOIR DÉCIDER D'AJOUTER OU

NON DES DISPOSITIONS À LA CONSTITUTION. JE SOUSCRIS À L'OPINION

DE CEUX QUI PRÉCONISENT QU'IL FAUT SE HÂTER TOUT EN USANT DE

PRUDENCE. SI NOUS NE POUVONS PAS DÉFINIR À FOND CE EN QUOI

CONSISTE L'AUTONOMIE GOUVERNEMENTALE DES AUTOCHTONES, NOUS

POURRIONS PEUT-ÊTRE NOUS ENTENDRE SUR CE QU'ELLE N'EST PAS. POUR

QUE CET EXERCICE SOIT PLUS CONCRET ET MOINS THÉORIQUE, IL SERAIT

PRÉFÉRABLE DE POURSUIVRE LES NÉGOCIATIONS QUI, ELLES, SONT
CONCRÈTES ET D'ELABORER DES DISPOSITIONS LÉGISLATIVES PRÉCISES
AVANT ET NON APRÈS QUE LES DROITS NE SOIENT INSCRITS DANS LA
CONSTITUTION.

JE FAIS CETTE PROPOSITION PARCE QUE LA

COLOMBIE-BRITANNIQUE PERSISTE À CROIRE QU'IL SERAIT MALAVISE

D'INSCRIRE DANS NOTRE CONSTITUTION DES DISPOSITIONS QUI NE SONT

PAS DÉFINIES, QUI NE LE SONT PAS ASSEZ BIEN OU QUI NE PEUVENT

ÊTRE ACCEPTÉES PAR LES DIVERSES PARTIES INTÉRESSEES.

PAR AILLEURS, JE VOUDRAIS QUE L'ON SACHE BIEN QUE LA COLOMBIE-BRITANNIQUE NE REJETTE PAS D'EMBLÉE LE PRINCIPE DE L'INSCRIPTION DANS NOTRE CONSTITUTION D'UN OU DE PLUSIEURS TYPES D'INSTITUTIONS GOUVERNEMENTALES. MONSIEUR LE PRÉSIDENT, IL RÈGNE UN NOUVEL ESPRIT DANS LE PAYS, UN ESPRIT DE RÉCONCILIATION ET DE COLLABORATION. DANS UNE LARGE MESURE, C'EST À VOTRE LEADERSHIP ET AU TON QUE VOUS AVEZ DONNÉ EN TANT QUE PREMIER MINISTRE QU'IL FAUT L'ATTRIBUER. TOUT LE MONDE CONNAÎT, MONSIEUR LE PREMIER MINISTRE, VOTRE EXPÉRIENCE EN MATIÈRE DE NÉGOCIATION ET VOS TALENTS DE MÉDIATEUR. DANS LE LANGAGE DE LA NÉGOCIATION, VOUS POUVEZ INTERPRÉTER CES PAROLES COMME UN SIGNAL, UN SIGNAL QUE MES MINISTRES ET MOI-MÊME SOMMES DISPOSÉS À COLLABORER AVEC VOUS ET AVEC LES AUTRES, TANT À CETTE CONFÉRENCE QUE PAR LA SUITE, AFIN

DE TROUVER UN LIBELLÉ MUTUELLEMENT ACCEPTABLE POUR DÉFINIR EN
QUOI CONSISTE LE PRINCIPE DE L'AUTONOMIE GOUVERNEMENTALE, CE
QU'IL N'EST PAS, SES RÉPERCUSSIONS ET L'OPPORTUNITÉ DE L'INSCRIRE
À CE MOMENT-CI DANS LA CONSTITUTION.

MERCI.





/ DOCUMENT: 800-20/024

CA1 2.2 -C 52

FIRST MINISTERS' CONFERENCE
ON
ABORIGINAL CONSTITUTIONAL MATTERS

CONFÉRENCE DES PREMIERS MINISTRES
SUR LES QUESTIONS CONSTITUTIONNELLES
INTÉRESSANT LES AUTOCHTONES

Agreement concerning the building and operating of a hospital centre in the Kahnawake Territory

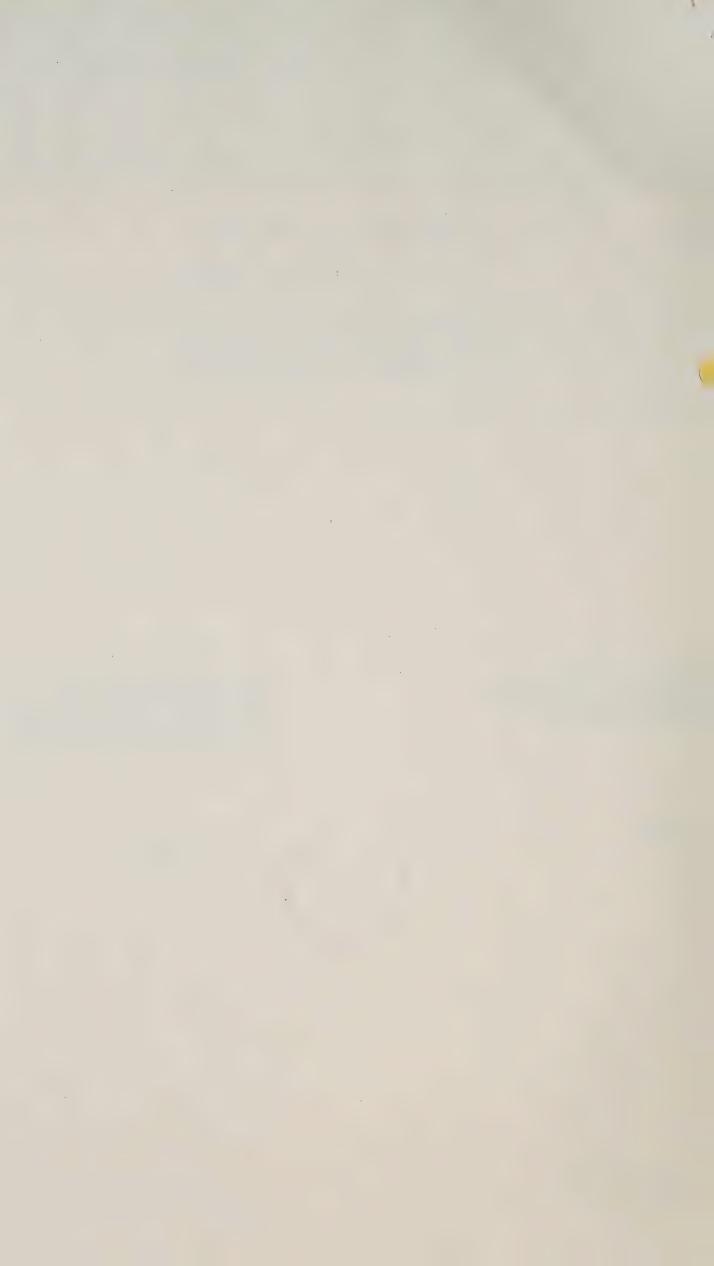
Entente concernant la construction et l'exploitation d'un centre hospitalier dans le territoire de Kahnawake

Quebec



Ouébec

OTTAWA, Ontario April 2 and 3, 1985 OTTAWA (Ontario) Les 2 et 3 avril 1985



Entente concernant la construction et l'exploitation d'un centre hospitalier dans le territoire de Kahnawake

#### ENTRE

LES MOHAWKS DE KAHNAWAKE représentés par leur Conseil élu,

(ci-après appelés "LES MOHAWKS DE KAHNAWAKE")

ET

LE GOUVERNEMENT DU QUÉBEC représenté par monsieur René Lévesque, Premier ministre, et monsieur Camille Laurin, m.d., ministre des Affaires sociales,

(ci-après appelé "LE GOUVERNEMENT").

## CONSIDÉRANT QUE LE GOUVERNEMENT A RECONNU:

- a) QUE les peuples aborigènes du Québec sont des nations distinctes qui ont droit à leur culture, à leur langue, à leurs coutumes et traditions ainsi que le droit d'orienter elles-mêmes le développement de cette identité propre;
- b) QUE les nations autochtones ont le droit d'avoir et de contrôler, des institutions qui correspondent à leurs besoins dans les domaines de la culture, de l'éducation, de la langue, de la santé, des services sociaux et du développement économique;
- c) QUE les nations autochtones ont le droit de bénéficier, dans le cadre d'ententes conclues avec LE GOUVERNEMENT, de fonds publics favorisant la poursuite d'objectifs qu'elles jugent fondamentaux;

CONSIDÉRANT QUE LES MOHAWKS DE KAHNAWAKE possèdent et exploitent un centre hospitalier connu sous le nom de KATERI MEMORIAL HOSPITAL CENTRE dont le bâtiment est devenu vétuste et qu'il est urgent de le remplacer par un édifice moderne, fonctionnel et sécuritaire;

CONSIDÉRANT QUE LES MOHAWKS DE KAHNAWAKE ont démontré leur capacité de maintenir et d'exploiter un centre hospitalier et d'offrir des services de santé de qualité tant pour les soins de longue durée que pour des soins d'hébergement et ce, malgré l'état peu propice des lieux;

LES MOHAWKS DE KAHNAWAKE ET LE GOUVERNEMENT s'entendent comme suit:

- 1) LES MOHAWKS DE KAHNAWAKE s'engagent:
  - a) à construire dans leur territoire un centre hospitalier comprenant 43 lits à vocation de soins de longue durée et d'hébergement et incluant quelques lits polyvalents ou d'observation, selon des plans et devis approuvés par les deux parties;

- b) à en confier l'exploitation au KATERI MEMORIAL HOSPITAL CENTRE, celle-ci étant une raison sociale enregistrée à la Cour supérieure de Montréal, en 1955, et que le Conseil a mandaté à cette fin et à prendre toutes les mesures nécessaires pour que le KATERI MEMORIAL HOSPITAL CENTRE respecte les règles de l'art en matière de santé et de services hospitaliers;
- c) à permettre audit organisme de discuter, en son nom, avec le ministre des Affaires sociales ou ses représentants, des budgets annuels requis pour en assurer le bon fonctionnement.

#### 2) LE GOUVERNEMENT s'engage:

- à fournir les fonds nécessaires aux MOHAWKS DE KAHNAWAKE pour la construction du centre hospitalier mentionné ci-dessus;
- b) à assurer le budget annuel requis pour le fonctionnement du centre hospitalier, selon les normes et barèmes convenus chaque année entre les parties;
- c) à fournir l'assistance technique et le support administratif nécessaires aux MOHAWKS DE KAHNAWAKE pour assurer le bon fonctionnement du centre hospitalier.
- 3) Le centre hospitalier offrira notamment les services de santé suivants:
  - a) services de clinique externe et d'urgence mineure
  - b) soins de longue durée
  - c) services d'hébergement
  - d) services de santé communautaire.
- 4) LES MOHAWKS DE KAHNAWAKE fourniront, à la fin de l'exercice financier, au ministre des Affaires sociales les états financiers annuels du centre hospitalier, préparés par des experts-comptables, ainsi que les rapports périodiques usuels et permettront à celui-ci ou à ses représentants de faire les vérifications requises.
- 5) LES MOHAWKS DE KAHNAWAKE s'engagent à accueillir dans leur centre hospitalier, dans la mesure où des lits seraient disponibles, des patients venant de l'extérieur du territoire.
- 6) LE GOUVERNEMENT pourra mettre fin au financement annuel de fonctionnement s'il advenait que le centre hospitalier ne soit plus utilisé aux fins décrites au paragraphe 3 ci-dessus ou si les services offerts n'étaient plus adéquats.
- 7) LES MOHAWKS DE KAHNAWAKE s'engagent à demander des soumissions publiques pour la construction du centre hospitalier aussitôt que possible après la date d'entrée en vigueur de la présente entente, à octroyer le contrat au plus bas soumissionnaire, à veiller à ce que les travaux progressent le plus rapidement possible de façon à ce que les travaux soient complétés au plus tard deux ans après l'entrée en vigueur de la présente entente. La politique de demande de soumissions des Mohawks de Kahnawake s'appliquera (annexe 1).
- 8) Pour donner effet à la présente entente, les MOHAWKS DE KAHNAWAKE s'engagent à faire adopter une résolution par leur Conseil et LE GOUVERNEMENT à présenter à l'Assemblée nationale, dans les meilleurs délais, un projet de loi.

Le projet de loi prévoira également que la Loi sur les services de santé et les services sociaux (L.R.Q. 1977, c. S-5) s'appliquera au nouvel établissement, dans la mesure où elle n'est pas incompatible avec les dispositions de la présente entente.

9) La présente entente entrera en vigueur dès que la résolution et le projet de loi mentionnés à l'article précédent entreront en vigueur, conformément aux procédures habituelles.

SIGNÉE À KAHNAWAKE, le	jæsept Norfor 2 Harril 1984.
POUR LES MOHAWKS DE KAHNAWAKE	Jaralin Williams
They have little	Mente Buch
	HAION TARON WEN The River
	Luga Monton
POUR LE GOUVERNEMENT	René Lévesque  Camille Caurin M. d.  Camille Laukin, m.d.

## TRADUCTION

# POLITIQUE DE DEMANDE DE SOUMISSIONS DU CONSEIL DES MOHAWKS DE KAHNAWAKE

Le Conseil des Mohawks de Kahnawake énonce en ces termes sa politique de demande de soumissions:

Dans l'attribution du travail à forfait, le Conseil des Mohawks a l'intention de promouvoir la justice et de donner priorité à l'engagement des membres de la bande.

Tout travail pour lequel un entrepreneur est requis devra être offert aux membres de la bande par demande de soumissions publiques de la bande.

Priorité sera accordée aux membres de la bande, pour tout travail à forfait lié au fonctionnement du Conseil des Mohawks, de ses organismes affiliés ou pour tout projet d'immobilisations.

Pour obtenir la priorité, le travail devra être de qualité égale ou supérieure à celui qu'on attendrait de la part d'un entrepreneur non indien.

Les entrepreneurs non mohawks ne seront invités à soumissionner par demande de soumissions publiques que lorsqu'aucun entrepreneur mohawk ne sera disponible.

En présence de soumissions faites par des entrepreneurs mohawks et non mohawks et dans l'hypothèse où la soumission faite par un entrepreneur mohawk serait rejetée sur une question de coûts, l'entrepreneur mohawk pourra malgré tout obtenir le contrat, à condition que le coût total des travaux ne dépasse pas de plus d'un certain pourcentage, qui reste à être établi, la soumission de l'entrepreneur non mohawk et pourvu qu'aucune augmentation de coûts ne soit encourue dans le déroulement de ce projet particulier.

#### APPLICATION

La présente politique s'applique aux projets d'immobilisations du Conseil des Mohawks comme les aqueducs et les égouts, les bâtisses de la bande des Mohawks et aux projets d'organismes affiliés financés sous les auspices du Conseil des Mohawks.

Les demandes de soumissions devront être affichées (2) deux semaines à l'avance pour tous les projets de plus de 1 000 \$, par avis public dans plusieurs endroits publics et annoncées sur les ondes de la station radiophonique CKRK.

Les demandes de soumissions devront contenir les spécificités des travaux, l'échéance et les informations connexes.

Les soumissions seront étudiées par un comité composé comme suit:

- 1) Membre du conseil
- 2) Gérant de la bande
- 3) Coordonnateur des travaux
- 4) Ingénieur de la bande

Les critères généraux seront la qualité du travail, le prix des contrats, l'échéance pour l'achèvement des travaux, et chacun de ces critères devra respecter les exigences particulières de chacun des projets.

EL. D

The Act will also provide that the Act respecting Health services and social services (Q.R.S. 1977, c. S-5) will apply to this new establishment, to the extent that it is not incompatible with the provisions of this agreement.

9) This agreement will come into effect as soon as the resolution and the Act mentioned in the preceding article will come into effect in conformity with the usual procedures.

	SIGNED AT KAHNAWAKE, On Joseph North 24th of april 1984.
	FOR THE KAHNAWAKE MOHAWKS  Menslin Wellanis
	I de Godley Dandel Home
_	Milliand The muste Bud
	Lemois / Land HALEN TAROVHEN Two Ruera
	Lugare Monton
	FOR LE GOUVERNEMENT  René Lévesque  René Lévesque
	Camille Laurin, md.

Agreement concerning the building and operating of a hospital centre in the Kahnawake Territory.

#### BETWEEN

THE KAHNAWAKE MOHAWKS represented by their elected Council,

(hereinafter called "THE KAHNAWAKE MOHAWKS")

#### AND

LE GOUVERNEMENT DU QUÉBEC represented by Mr. René Lévesque, Prime Minister, and Mr. Camille Laurin, m.d., Minister of Social Affairs,

(hereinafter called "LE GOUVERNEMENT").

#### CONSIDERING THAT LE GOUVERNEMENT has recognized:

- a) THAT the Aboriginal Peoples of Québec constitute distinct nations, entitled to their own culture, language, traditional customs as well as having the right to determine, by themselves, the development of their own identity;
- b) THAT the Aboriginal Nations have the right to have and control such institutions as may correspond to their needs in matters of culture, education, language, health and social services as well as economic development;
- c) THAT the Aboriginal Nations are entitled, within the framework of agreements between them and LE GOUVERNEMENT, to benefit from public funds to encourage the pursuit of objectives they esteem to be fundamental.

CONSIDERING THAT THE KAHNAWAKE MOHAWKS have operated and continue to operate a hospital centre know as KATERI MEMORIAL HOSPITAL CENTRE in a building that is now beyond repair and that it is urgent to replace it by a modern building that is functional and provides security;

CONSIDERING THAT THE KAHNAWAKE MOHAWKS have shown their ability to maintain and operate a hospital centre and to offer quality health services, both short term and extended care, despite the inadequacies of the premises;

THE KAHNAWAKE MOHAWKS and LE GOUVERNEMENT hereby agree as follows:

- 1) THE KAHNAWAKE MOHAWKS agree:
  - a) to build on their Territory a hospital centre comprising 43 beds for long term care and nursing care including beds for multiple use or observation, in accordance with plans and specifications approved by both parties;
  - b) to entrust the operating of this hospital centre to the KATERI MEMORIAL HOSPITAL CENTRE, a non-profit organization

registered with Québec Superior Court in 1955 and mandated for this purpose by the Council, and to take all the necessary steps to have this body abide by the ethics pertaining to health care and hospital services;

c) to allow the said organization to discuss, in its name, with the Minister of Social Affairs or his representatives, questions pertaining to annual budgets required to ensure the operating of the centre.

#### 2) LE GOUVERNEMENT agrees:

- a) to provide THE KAHNAWAKE MOHAWKS with the funds required for building the above-mentioned hospital centre;
- b) to provide the annual budget required for operating the hospital centre, in accordance with the criteria and schedules agreed upon each year by the parties;
- c) to provide the technical assistance and administrative support required by THE KAHNAWAKE MOHAWKS for operating the hospital centre.
- 3) The hospital centre will offer such health services as:
  - a) out-patient and minor emergency care
  - b) long term care
  - c) nursing care
  - d) community health services.
- 4) THE KAHNAWAKE MOHAWKS will supply the Minister of Social Affairs, at the end of the fiscal year, with the annual financial reports of the hospital centre, prepared by auditors as well as the usual periodical reports and will enable him or his representatives to carry out any verification required.
- 5) THE KAHNAWAKE MOHAWKS agree to receive in their hospital centre, inasmuch as beds are available, patients from outside the Territory.
- 6) LE GOUVERNEMENT could terminate annual funding for operating the hospital centre if the said centre were no longer used for the purposes described in paragraph 3 above or if the services it offers were no longer adequate.
- THE KAHNAWAKE MOHAWKS agree to call for public tenders for the building of the hospital centre as son as possible after the effective date of this agreement, to award the contract to the lowest tendered and to see to it that construction operations are in progress as quickly as possible in such a way as to be terminated, at the most, two years from the effective date of this agreement. Kahnawake Mohawks Tender Policy will apply (Appendix 1).

Constructors must have their principal place of business in Québec.

8) To give effect to this agreement THE KAHNAWAKE MOHAWKS agree to have a resolution adopted by their Council and LE GOUVERNEMENT to introduce legislation in the Assemblée nationale as soon as possible.

## MOHAWK COUNCIL OF KAHNAWAKE TENDER POLICY

THAT the Mohawk Council of Kahnawake does state as its policy the following:

The intent of the Council is to promote fairness and priority in hiring Band Members in the allocating of contract work.

Any work to be performed which requires a contractor, must be made available to Band Members by way of Band public Tender.

Band Members shall be given priority for all contract work within the Mohawk Council operations, capital projects and its affiliate organizations.

The priority rests on the criteria that the work must be of same or superior quality as would be expected by any non-Indian contractor.

Where a Mohawk contractor cannot be found only then will non Mohawk contractors be invited to bid by Public tender.

Where there are bids from Mohawk and non Mohawk contractors, and the Mohawk member is outbidded by way of price, the Mohawk contractor will be given the option of meeting the bid within a (%) percent flexibility to be determined by the criteria of overall cost of work to be performed, provided no cost overruns will be incurred for that specific project.

#### APPLICATION

This policy applies to the Mohawk Council capital projects such as water & sewer, band buildings and the affiliates which are financed under the auspecies of the Mohawk Council.

Tenders shall be posted (2) two weeks in advance for all projects, over 1 000 \$, by public bulletin at several public locations, and announced on the radio CKRK.

Tenders will contain the work requirements, time frame and related information.

Tenders will be decided upon by a tender committee made up of the following:

- 1) Council member
- 2) Band Manager
- 3) Operation Co-ordinator
- 4) Band Engineer

The general criteria will be quality of work, price of contracts, time frame for completion of work, all of which must comply with the specific requirements of each project.

A. DA

Ia'tehotirihwaientá:'on ne ahatinonhsón:ni tánon' ahonténtia'te ne tiakenheion'taientáhkhwa tsi kanonhstá:kon ne Kahnawà:ke.

Tsi na'tehontere ne

Kanawa:ke Kanienkeha:ka ratitsenhaiens ronwatiia'tinion:ton.

(Kahnawa'kehro:non Kanien'keha:ka)

tánon' ne

Kakorahtsherá:kon ne Tetianontarí:kon Mr. Rene Leveque Rakó:ra tánon' ne Mr. Camille Laurin Rakó:ra ne raterihwatsterístha orihwa'shón:'a.

(Kakorahtsherā:kon ronwatina'tonhkhwa)

## Kā:nik ki' ne kakorāhtshera iahatiien:tere'ne.

- a) Tsi nihā:ti ne onkwehōn:we ratinākere ne tsi niiaonhōntsa ne Tetianontarī:kon, rononha ahatiianerenhserōn:ni tsi nī:ioht tsi ahontia'tahtēn:tia'te tsi non:we nihononhontsā:ien. Ne ahatihsere tsi nihotiianerenhserò:ten tsi nihotirihò:ten ne onkwehōn:we. Tho non:we nitiawé:non tsi rononkwehōn:we.

  Onkwehōn:we tenhatiia'tō:rehte tsi nikaianerenhserò:ten enhatīhsere tsi non:we nihatinā:kere.
- b) Akaianerenhseraién:take ne onkwehón:we ahaia'takwe'niioháke. Onkwehón:we tahaia'tó:rehte tánon' raónha aontahanónhton oh nahò:ten teiotohontsóhon, tsi ní:ioht tsi ronateweienstonhátie tánon' tsi ní:ioht tsi ronathatonhseraweienstonhátie.

  Ahatóweienste tsi nihawennò:ten, tánon' tsi nihotiianerenhserò:ten ne onkwéhon:we.

Ahatóweienste ò:ni' oh ní:ioht ne kaia'takehnháhtshera teiotohontsóhon. tsi nón:we nihatinakerenion ne onkwehón:we.

Ahatirihwihsake oʻ:ni' oh nii:ioht tsi ahonthwiston:ni tsi non:we nihatinakerenion ne onkwehon:we.

Rononha enhonthwiston:ni. Rononha enhontio'tenhseron:nien. c) Kahiatónhserá:ien tsi na'tehóntere ne onkwehón:we tánon' ne Kakoráhtshera tsi rori:waien ne ahaié:na ne ohwísta ne ahotihretsá:ron ne ahontatia'takéhnha tsi nahò:ten ronahtentia'tonhatie. Ne ronónha ne onkwehón:we iahontahsónteren.

Ne ia'tahonnionhtónnionhwe ne kakoráhtshera tsi ó:nen wahón:nise shihonahtentia:ton ne kanien'kehá:ka ne tsi iakenheion'taientáhkhwa kanónhsote ne Kahnawa:ke. ''Kateri Memorial Hospital Centre'' tsi konwahshennaienté:ri. Sénhak ronahtentia'tónhatie. Shé:kon ò:ni' tho tehonwatíhshnie. Ronatiohkowa:nen tho shé:kon rati:teron. Wahón:nise ó:nen tho nón:we sha'tehonwatihshnie. O:nen ò:ni' wa'kanonhsaká:ion'ne. Sótsi' ó:nen iononhsakaión:'on í:iah thaón:ton aonsakanonhsakwatákwen. Kí:ken tsi niióhseres é:so wa'thoti'nikonhnhá:ren. Teiotohontsóhon ne áse'tsi aonsakanonhsonníheke. Teiotohontsóhon ò:ni' ne ò:ia' ahatinonhsakétsko ne iakenheion'taientáhkhwa.
Ne aonsahontenonhshón:ni tsi niká:ien ne iáhte iótteron ne eh ahati'terón:take ne rotinonhwaktanión:ni.

Kahnawā:ke kanien'kehā:ka rotikwēnion ne ahonterihwahtēntia'te ne iakenheion'taientāhkhwa. Ion'wē:sen tsi nī:ioht tsi tehsakotīhshnie ne rotinonwaktanion:ni. Sha'tē:ioht tsi tehonwatīhshnie ne onkwehshon:'a tsi nihā:ti ne ē:so tsi rotinonwaktanion:ni tānon' tsi nihā:ti ne ī:iah eh tehotinonwaktā:ni.

Ioton'onhátie tehonwatíhshnie aronhátien tsi nia'té:kon tho natoktá:ni tsi nikanonhsò:ten.

Kalmawā:ke Kanien'kehā:ka tānon' ne Tetianontarī:kon Kakorahtsherā:kon tho nī:ioht kī:ken tsi wahatirihwanon:we'ne:

- 1) Kahnawa: ke Kanien' keha: ka wahatirihwanon: we'ne:
  - a) tsi kanonhsta:ton ne Kahnawa:ke ahatinonhshon:ni ne iakenheion'taientahkhwa ne iakaié:rike ne kaié:ri niwahsen ahsen nikanaktake. Tho non:we na'tenhonwatihshnie tsi niha:ti ne é:so tsi rotinonwaktanon:ni. Akanaktaién:take o:ni' ne aon:ton tahonwatihshnie tsi niha:ti i:iah eh tehotinonwaktani.

Akarihwison oʻ:ni' ne tetsaroʻnhkwen sha'tehotirihwanonhweʻ:'on. Kanien'kehaʻ:ka tanon' ne Kakoráhtshera.

b) Ne ohén:ton tahatí:ta'ne ahonterihwahténtia'te ne Kateri Memorial Hospital Centre Aotiohkwa (né:'e ne í:iah tekakon'tsherakwas)
Tetianontarí:kon Teiontia'torehtáhkhwa nonkwá:ti thonatahshá:ronte. Tsi náhe ne wísk niwáhsen wísk tewen'niáwe shiiohserahsé:ta's. Né:'e ne Kahnawà:ke ratitsénhaiens rotirihwahnirá:ten.

O:nenk tsi né:'e enhátihsere tsi nikaianerenhsero:ten ne onkwehshón:'a ahonwatiia'takéhnha tánon' tsi ní:ioht tsi tahonwatíhshnie ne tsi iakenheion'taientáhkhwa.

- c) tánon' ahonwatiríhon kí:ken katióhkwaien ne tahatihthá:ren ne rakó:ra ne orì:wa ronterihwasterítha tóka' ò:ni' né:'e ne raonkwè:ta. Ahatiri'wanón:ton oh ní:ioht tsi taiotaweia'tonhátie ne ohwísta ne aón:ton aontatia'tahtén:ti'ate ne tsi iakenheion'taientáhkhwa.
- 2) Kakoráhtshera wahatirihwanón:we'ne:
  - a) Ne aontahsakó:ion ne Kahnawà:ke Kanien'kehá:ka tsi ní:kon teiotohontsóhon ne ohwísta ne ahontenonhsón:ni ne tsi akenheion'taientáhkhwa.
  - b) Ne tiohserátshon tsi aontahsakó:ion tsi ní:kon teiotonhontsóhon ne ohwista ne ahonténtia'te ne tsi iakenheion'taientáhkhwa. Ne kaia'takwe'ní:io. Tsi ní:ioht tsi rotirihwisa'á:hon ne Kakoráhtshera tánon' ne Kanien'kehá:ka, tsi aontaweià:thake ne ohwista tíohtkon ne tsóhsera.
  - c) Ne aontahshakoia'tínionte ne rontetsen'tsherí:io.
    Ne ahonwatihrha'ne tsi niiaonkwe'tò:ten
    tehonatonhontso:ni ne ohén:ton tahatí:ta'ne ne
    ahonhtén:tia'te ne tsi iakenheion'taientáhkhwa.
- 3) Tsi nī:ioht tsi eniakoia'takéhnha ne tsi iakenheion'taientáhkhwa.
  - a) Tsi tetehshakotitsén:tha
  - b) Kari:wes rotinonwaktanion:ni
  - c) Teiakotitséntha, tsi nihá:ti kwah iah teshontkétskwas.
  - d) Kana:ta Kaia'takehnha'tshera:ien.
- 4) Tsi nenwatohserókten ne Kahnawà:ke Kanien'kehá:ka entiakó:ien ne kakoráhtshera ne raotihiatónhsera tsi nón:we nikahiá:ton tó: ní:kon ronathwistahní:non tánon' tsi ní:ioht tsi ronahtentiatonhátie ne tsi iakenheion'taientáhkhwa. Kwa tó:ken na'tekónteron ienhóntka'we ne ahóntken'se. Tsi nihá:ti ne ohén:ton rón:nete ne akwé:ken tenshatiia'tó:rehte tóka' ken akwé:kon tkarihwaié:ri.
- 5) Kanien'kehā:ka rotirihwanonhwē:'on ne tahonwatihshnie tsi nihā:ti ne rotinonwaktanion:ni ne ākte' non:we nithonahtention, tsi nī:kon enwā:ton. Rotirihwanonhwē:'on ne ahonwatinaktotha'se towa' ionāktote.
- 6) Enhatikwé:ni ne kakoráhtshera enhatí:ia'ke tsi thonthwistatenniéhtha tsi roniahtentià:ton ne tsi iakenheion'taientáhkhwa tóka' shí:ken í:iah né:'e thaonsahatíhsere tsi nahò:ten kahiá:ton ne áhsen tánon' tóka' shí:ken í:iah thia'teskaié:ri tsi ní:ioht tsi ronwatiia'takéhnhas ne onkwehshón:'a.

- 7) Kanien'kehā:ka rotirihwanonhwē:on ienhonwatī:nonke tsi nikā:ien enhontenonhshōn:ni ne tsi iakenheion'taientāhkhwas tsi niiō:re enkarihwahnirā:ton tānon' enkahiatonhseronnīhake ne onkwe'tā:ke enkaien:take. Tsi nikā:ien aonha kā:ron enhanā:ton ne:'e ki! enthonwā:ion ne ahanonhsaketsko. Teiohserā:ke enhoien:take ne ahanonhsisa tānon' tōka' shī:ken ī:iah tehorihwaierī:ton enwā:ton ki' akō:ren enhshontenhnha'ne. Nē:'e enhatīhsere ne Kahnawa'kehrō:non tsi nī:ioht tsi rotirihwīson ne (Appendix I) Tsi nikā:ien ne rontenonhshōn:ni ō:nenk tsi kēn:'en tetianontarī:ken enthohten:tion.
- 8) Né:'e ne aioió'ten tsi ní:ioht tsi rotirihwanonhwé:'on ó:nenk ne Kahnawà:ke kanien'kehá:ka wahatirihwanón:we'ne ne kahiatonhserá:ke akahia:tonke tsi nahò:ten ia'tehotirihwaientá:se ne ratitsénhaiens tánon' ne kakoráhtshera ahatirihwá:ren ne kaianerénhsera tsi nón:we thatiianerenhserón:ni ne kakorahtsherá:kon tsi niiosnó:re enwá:ton.

Tsi naho:ten entewahtka'we ne kaianerenhseri:son.

-tsi nikā:ien ne kaianerenhserīsen karihwakwennienstha ne ata'karitehtshera kaia'takehnhātshera tānon' waterihwatsterīstha orihwa'shon:'a (Q.R.P. 1977, C.S.5) ne:'e enhatīhsere tsi non:we kī:ken kanonhsase'tsi enhatinonhsaketsko ne tsi iakenheion'taientāhkhwa tsi niio:re ne akwe:kon iakaia'taie:rike tsi nī:ioht tsi rotirihwīson tsi rotiianerehseron:ni.

9) Kī:ken waterihwahserón:ni akwē:kon ia'tehoti'nikonhraientā:on. Tho niiosnó:re enwaterihwahtén:ti tsi niiosnó:re ia'tenwatóhetste kī:ken ohén:ton tsi tewatthró:ri tsi tkaianerenhserí:son.

Kahnawa: ke ronatatshen: nare,

Kahnawa:ke Kanien'keha:ka raotirihwa:ke.

AIENTARENGEN Tuo Rivers
Lugare Moston
Jain Foodlagef

Longert / Aug.

1984.

Kakorahtsherā:kon

Rema Levesque

Camille Laurin M.D.

Government

> FIRST MINISTERS' CONFERENCE ON ABORIGINAL CONSTITUTIONAL MATTERS

223.

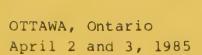
CONFÉRENCE DES PREMIERS MINISTRES SUR LES QUESTIONS CONSTITUTIONNELLES INTÉRESSANT LES AUTOCHTONES

Agreement concerning the building and operating of a hospital centre in the Kahnawake Territory

Entente concernant la construction et l'exploitation d'un centre hospitalier dans le territoire de Kahnawake

Quebec

Québec



OTTAWA (Ontario) Les 2 et 3 avril 1985

Entente concernant la construction et l'exploitation d'un centre hospitalier dans le territoire de Kahnawake

#### ENTRE

LES MOHAWKS DE KAHNAWAKE représentés par leur Conseil élu,

(ci-après appelés "LES MOHAWKS DE KAHNAWAKE")

#### ET

LE GOUVERNEMENT DU QUÉBEC représenté par monsieur René Lévesque, Premier ministre, et monsieur Camille Laurin, m.d., ministre des Affaires sociales,

(ci-après appelé "LE GOUVERNEMENT").

## CONSIDÉRANT QUE LE GOUVERNEMENT A RECONNU:

- a) QUE les peuples aborigènes du Québec sont des nations distinctes qui ont droit à leur culture, à leur langue, à leurs coutumes et traditions ainsi que le droit d'orienter elles-mêmes le développement de cette identité propre;
- b) QUE les nations autochtones ont le droit d'avoir et de contrôler, des institutions qui correspondent à leurs besoins dans les domaines de la culture, de l'éducation, de la langue, de la santé, des services sociaux et du développement économique;
- c) QUE les nations autochtones ont le droit de bénéficier, dans le cadre d'ententes conclues avec LE GOUVERNEMENT, de fonds publics favorisant la poursuite d'objectifs qu'elles jugent fondamentaux;

CONSIDÉRANT QUE LES MOHAWKS DE KAHNAWAKE possèdent et exploitent un centre hospitalier connu sous le nom de KATERI MEMORIAL HOSPITAL CENTRE dont le bâtiment est devenu vétuste et qu'il est urgent de le remplacer par un édifice moderne, fonctionnel et sécuritaire;

CONSIDÉRANT QUE LES MOHAWKS DE KAHNAWAKE ont démontré leur capacité de maintenir et d'exploiter un centre hospitalier et d'offrir des services de santé de qualité tant pour les soins de longue durée que pour des soins d'hébergement et ce, malgré l'état peu propice des lieux;

#### LES MOHAWKS DE KAHNAWAKE ET LE GOUVERNEMENT s'entendent comme suit:

- 1) LES MOHAWKS DE KAHNAWAKE s'engagent:
  - a) à construire dans leur territoire un centre hospitalier comprenant 43 lits à vocation de soins de longue durée et d'hébergement et incluant quelques lits polyvalents ou d'observation, selon des plans et devis approuvés par les deux parties;

- à en confier l'exploitation au KATERI MEMORIAL HOSPITAL CENTRE, celle-ci étant une raison sociale enregistrée à la Cour supérieure de Montréal, en 1955, et que le Conseil a mandaté à cette fin et à prendre toutes les mesures nécessaires pour que le KATERI MEMORIAL HOSPITAL CENTRE respecte les règles de l'art en matière de santé et de services hospitaliers;
- c) à permettre audit organisme de discuter, en son nom, avec le ministre des Affaires sociales ou ses représentants, des budgets annuels requis pour en assurer le bon fonctionnement.

## 2) LE GOUVERNEMENT s'engage:

- a) à fournir les fonds nécessaires aux MOHAWKS DE KAHNAWAKE pour la construction du centre hospitalier mentionné cí-dessus;
- b) à assurer le budget annuel requis pour le fonctionnement du centre hospitalier, selon les normes et barèmes convenus chaque année entre les parties;
- c) à fournir l'assistance technique et le support administratif nécessaires aux MOHAWKS DE KAHNAWAKE pour assurer le bon fonctionnement du centre hospitalier.
- 3) Le centre hospitalier offrira notamment les services de santé suivants:
  - a) services de clinique externe et d'urgence mineure
  - b) soins de longue durée
  - c) services d'hébergement
  - d) services de santé communautaire.
- 4) LES MOHAWKS DE KAHNAWAKE fourniront, à la fin de l'exercice financier, au ministre des Affaires sociales les états financiers annuels du centre hospitalier, préparés par des experts-comptables, ainsi que les rapports périodiques usuels et permettront à celui-ci ou à ses représentants de faire les vérifications requises.
- 5) LES MOHAWKS DE KAHNAWAKE s'engagent à accueillir dans leur centre hospitalier, dans la mesure où des lits seraient disponibles, des patients venant de l'extérieur du territoire.
- 6) LE GOUVERNEMENT pourra mettre fin au financement annuel de fonctionnement s'il advenait que le centre hospitalier ne soit plus utilisé aux fins décrites au paragraphe 3 ci-dessus ou si les services offerts n'étaient plus adéquats.
- 7) LES MOHAWKS DE KAHNAWAKE s'engagent à demander des soumissions publiques pour la construction du centre hospitalier aussitôt que possible après la date d'entrée en vigueur de la présente entente, à octroyer le contrat au plus bas soumissionnaire, à veiller à ce que les travaux progressent le plus rapidement possible de façon à ce que les travaux soient complétés au plus tard deux ans après l'entrée en vigueur de la présente entente. La politique de demande de soumissions des Mohawks de Kahnawake s'appliquera (annexe 1).
- 8) Pour donner effet à la présente entente, les MOHAWKS DE KAHNAWAKE s'engagent à faire adopter une résolution par leur Conseil et LE GOUVERNEMENT à présenter à l'Assemblée nationale, dans les meilleurs délais, un projet de loi.

Le projet de loi prévoira également que la Loi sur les services de santé et les services sociaux (L.R.Q. 1977, c. S-5) s'appliquera au nouvel établissement, dans la mesure où elle n'est pas incompatible avec les dispositions de la présente entente.

9) La présente entente entrera en vigueur dès que la résolution et le projet de loi mentionnés à l'article précédent entreront en vigueur, conformément aux procédures habituelles.

POUR LES MOHAWKS DE KAHNAWAKE

POUR LE GOUVERNEMENT

#### TRADUCTION

#### POLITIQUE DE DEMANDE DE SOUMISSIONS DU

#### CONSEIL DES MOHAWKS DE KAHNAWAKE

Le Conseil des Mohawks de Kahnawake énonce en ces termes sa politique de demande de soumissions:

Dans l'attribution du travail à forfait, le Conseil des Mohawks a l'intention de promouvoir la justice et de donner priorité à l'engagement des membres de la bande.

Tout travail pour leguel un entrepreneur est requis devra être offert aux membres de la bande par demande de soumissions publiques de la bande.

Priorité sera accordée aux membres de la bande, pour tout travail à forfait lié au fonctionnement du Conseil des Mohawks, de ses organismes affiliés ou pour tout projet d'immobilisations.

Pour obtenir la priorité, le travail devra être de qualité égale ou supérieure à celui qu'on attendrait de la part d'un entrepreneur non indien.

Les entrepreneurs non mohawks ne seront invités à soumissionner par demande de soumissions publiques que lorsqu'aucun entrepreneur mohawk ne sera disponible.

En présence de soumissions faites par des entrepreneurs mohawks et non mohawks et dans l'hypothèse où la soumission faite par un entrepreneur mohawk serait rejetée sur une question de coûts, l'entrepreneur mohawk pourra malgré tout obtenir le contrat, à condition que le coût total des travaux ne dépasse pas de plus d'un certain pourcentage, qui reste à être établi, la soumission de l'entrepreneur non mohawk et pourvu qu'aucune augmentation de coûts ne soit encourue dans le déroulement de ce projet particulier.

#### APPLICATION

La présente politique s'applique aux projets d'immobilisations du Conseil des Mohawks comme les aqueducs et les égouts, les bâtisses de la bande des Mohawks et aux projets d'organismes affiliés financés sous les auspices du Conseil des Mohawks.

Les demandes de soumissions devront être affichées (2) deux semaines à l'avance pour tous les projets de plus de 1 000 \$, par avis public dans plusieurs endroits publics et annoncées sur les ondes de la station radiophonique CKRK.

Les demandes de soumissions devront contenir les spécificités des travaux, l'échéance et les informations connexes.

Les soumissions seront étudiées par un comité composé comme suit:

- Membre du conseil
- 2) 3) Gérant de la bande
- Coordonnateur des travaux
- Ingénieur de la bande

Les critères généraux seront la qualité du travail, le prix des contrats, l'échéance pour l'achèvement des travaux, et chacun de ces critères devra respecter les exigences particulières de chacun des projets.

The Act will also provide that the Act respecting Health services and social services (Q.R.S. 1977, c. S-5) will apply to this new establishment, to the extent that it is not incompatible with the provisions of this agreement.

9) This agreement will come into effect as soon as the resolution and the Act mentioned in the preceding article will come into effect in conformity with the usual procedures.

	SIGNED AT KAHNAWAKE, on	Joseph Roster	24th of april 1984.
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	FOR LE GOUVERNEMENT	René Lévesque	The state of the s
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Agreement concerning the building and operating of a hospital centre in the Kahnawake Territory.

#### BETWEEN

THE KAHNAWAKE MOHAWKS represented by their elected Council,

(hereinafter called "THE KAHNAWAKE MOHAWKS")

#### AND

LE GOUVERNEMENT DU QUÉBEC represented by Mr. René Lévesque, Prime Minister, and Mr. Camille Laurin, m.d., Minister of Social Affairs,

(hereinafter called "LE GOUVERNEMENT").

#### CONSIDERING THAT LE GOUVERNEMENT has recognized:

- a) THAT the Aboriginal Peoples of Québec constitute distinct nations, entitled to their own culture, language, traditional customs as well as having the right to determine, by themselves, the development of their own identity;
- b) THAT the Aboriginal Nations have the right to have and control such institutions as may correspond to their needs in matters of culture, education, language, health and social services as well as economic development;
- c) THAT the Aboriginal Nations are entitled, within the framework of agreements between them and LE GOUVERNEMENT, to benefit from public funds to encourage the pursuit of objectives they esteem to be fundamental.

CONSIDERING THAT THE KAHNAWAKE MOHAWKS have operated and continue to operate a hospital centre know as KATERI MEMORIAL HOSPITAL CENTRE in a building that is now beyond repair and that it is urgent to replace it by a modern building that is functional and provides security;

CONSIDERING THAT THE KAHNAWAKE MOHAWKS have shown their ability to maintain and operate a hospital centre and to offer quality health services, both short term and extended care, despite the inadequacies of the premises;

THE KAHNAWAKE MOHAWKS and LE GOUVERNEMENT hereby agree as follows:

- 1) THE KAHNAWAKE MOHAWKS agree:
  - a) to build on their Territory a hospital centre comprising 43 beds for long term care and nursing care including beds for multiple use or observation, in accordance with plans and specifications approved by both parties;
  - b) to entrust the operating of this hospital centre to the KATERI MEMORIAL HOSPITAL CENTRE, a non-profit organization

registered with Québec Superior Court in 1955 and mandated for this purpose by the Council, and to take all the necessary steps to have this body abide by the ethics pertaining to health care and hospital services;

c) to allow the said organization to discuss, in its name, with the Minister of Social Affairs or his representatives, questions pertaining to annual budgets required to ensure the operating of the centre.

#### 2) LE GOUVERNEMENT agrees:

- a) to provide THE KAHNAWAKE MOHAWKS with the funds required for building the above-mentioned hospital centre;
- b) to provide the annual budget required for operating the hospital centre, in accordance with the criteria and schedules agreed upon each year by the parties;
- c) to provide the technical assistance and administrative support required by THE KAHNAWAKE MOHAWKS for operating the hospital centre.
- 3) The hospital centre will offer such health services as:
  - a) out-patient and minor emergency care
  - b) long term care
  - c) nursing care
  - d) community health services.
- 4) THE KAHNAWAKE MOHAWKS will supply the Minister of Social Affairs, at the end of the fiscal year, with the annual financial reports of the hospital centre, prepared by auditors as well as the usual periodical reports and will enable him or his representatives to carry out any verification required.
- 5) THE KAHNAWAKE MOHAWKS agree to receive in their hospital centre, inasmuch as beds are available, patients from outside the Territory.
- 6) LE GOUVERNEMENT could terminate annual funding for operating the hospital centre if the said centre were no longer used for the purposes described in paragraph 3 above or if the services it offers were no longer adequate.
- 7) THE KAHNAWAKE MOHAWKS agree to call for public tenders for the building of the hospital centre as son as possible after the effective date of this agreement, to award the contract to the lowest tendered and to see to it that construction operations are in progress as quickly as possible in such a way as to be terminated, at the most, two years from the effective date of this agreement. Kahnawake Mohawks Tender Policy will apply (Appendix 1).

Constructors must have their principal place of business in Québec.

8) To give effect to this agreement THE KAHNAWAKE MOHAWKS agree to have a resolution adopted by their Council and LE GOUVERNEMENT to introduce legislation in the Assemblée nationale as soon as possible.

# MOHAWK COUNCIL OF KAHNAWAKE TENDER POLICY

THAT the Mohawk Council of Kahnawake does state as its policy the following:

The intent of the Council is to promote fairness and priority in hiring Band Members in the allocating of contract work.

Any work to be performed which requires a contractor, must be made available to Band Members by way of Band public Tender.

Band Members shall be given priority for all contract work within the Mohawk Council operations, capital projects and its affiliate organizations.

The priority rests on the criteria that the work must be of same or superior quality as would be expected by any non-Indian contractor.

Where a Mohawk contractor cannot be found only then will non Mohawk contractors be invited to bid by Public tender.

Where there are bids from Mohawk and non Mohawk contractors, and the Mohawk member is outbidded by way of price, the Mohawk contractor will be given the option of meeting the bid within a (%) percent flexibility to be determined by the criteria of overall cost of work to be performed, provided no cost overruns will be incurred for that specific project.

#### APPLICATION

This policy applies to the Mohawk Council capital projects such as water & sewer, band buildings and the affiliates which are financed under the auspecies of the Mohawk Council.

Tenders shall be posted (2) two weeks in advance for all projects, over (1 000 \$, by public bulletin at several public locations, and announced on the radio CKRK.

Tenders will contain the work requirements, time frame and related information.

Tenders will be decided upon by a tender committee made up of the following:

- 1) Council member
- 2) Band Manager
- 3) Operation Co-ordinator
- 4) Band Engineer

The general criteria will be quality of work, price of contracts, time frame for completion of work, all of which must comply with the specific requirements of each project.

H. FA

Ia'tehotirihwaientá:'on ne ahatinonhsón:ni tánon' ahonténtia'te ne tiakenheion'taientáhkhwa tsi kanonhstá:kon ne Kahnawà:ke.

#### Tsi na'tehontere ne

Kanawa:ke Kanienkeha:ka ratitsénhaiens ronwatiia'tinión:ton.

(Kahnawa'kehrō:non Kanien'kehā:ka)

#### tánon' ne

Kakorahtsherá:kon ne Tetianontarí:kon Mr. Rene Leveque Rakó:ra tánon' ne Mr. Camille Laurin Rakó:ra ne raterihwatsterístha orihwa'shón:'a.

(Kakorahtsherá:kon ronwatina'tónhkhwa)

#### Ká:nik ki' ne kakoráhtshera iahatiién:tere'ne.

- a) Tsi nihā:ti ne onkwehōn:we ratinākere ne tsi niiaonhōntsa ne Tetianontarī:kon, ronōnha ahatiianerenhserōn:ni tsi nī:ioht tsi ahontia'tahtēn:tia'te tsi nōn:we nihononhontsā:ien. Ne ahatihsere tsi nihotiianerenhserō:ten tsi nihotirihō:ten ne onkwehōn:we. Tho nōn:we nitiawé:non tsi rononkwehōn:we.

  Onkwehōn:we tenhatiia'tō:rehte tsi nikaianerenhserō:ten enhatīhsere tsi nōn:we nihatinā:kere.
- b) Akaianerenhseraien:take ne onkwehón:we ahaia'takwe'niioháke. Onkwehón:we tahaia'tó:rehte tánon' raónha aontahanónhton oh nahô:ten teiotohontsóhon, tsi ní:ioht tsi ronateweienstonhátie tánon' tsi ní:ioht tsi ronathatonhseraweienstonhátie. Ahatóweienste tsi nihawennò:ten, tánon' tsi nihotiianerenhserò:ten ne onkwéhon:we.

Ahatóweienste o:ni' oh ní:ioht ne kaia'takehnháhtshera teiotohontsóhon. tsi nón:we nihatinakerenion ne onkwehón:we.

Ahatirihwihsake o:ni' oh ni:ioht tsi ahonthwiston:ni tsi non:we nihatinakerenion ne onkwehon:we.

Ronónha enhonthwistón:ni. Ronónha enhontio'tenhserón:nien. c) Kahiatonhsera:ien tsi na'tehontere ne onkwehon:we tanon' ne Kakorahtshera tsi rori:waien ne ahaie:na ne ohwista ne ahotihretsa:ron ne ahontatia'takéhnha tsi naho:ten ronahtentia'tonhatie. Ne rononha ne onkwehon:we iahontahsonteren.

Ne ia'tahonnionhtónnionhwe ne kakoráhtshera tsi ó:nen wahón:nise shihonahtentià:ton ne kanien'kehá:ka ne tsi iakenheion'taientáhkhwa kanónhsote ne Kahnawà:ke. ''Kateri Memorial Hospital Centre'' tsi konwahshennaienté:ri. Sénhak ronahtentia'tónhatie. Shé:kon ò:ni' tho tehonwatíhshnie. Ronatiohkowá:nen tho shé:kon ratì:teron. Wahón:nise ó:nen tho nón:we sha'tehonwatihshnie. Ó:nen ò:ni' wa'kanonhsaká:ion'ne. Sótsi' ó:nen iononhsakaión:'on í:iah thaón:ton aonsakanonhsakwatákwen. Kí:ken tsi niióhseres é:so wa'thoti'nikonhnhá:ren. Teiotohontsóhon ne áse'tsi aonsakanonhsonníheke. Teiotohontsóhon ò:ni' ne ò:ia' ahatinonhsakétsko ne iakenheion'taientáhkhwa.
Ne aonsahontenonhshón:ni tsi niká:ien ne iáhte iótteron ne eh ahati'terón:take ne rotinonhwaktanión:ni.

Kahnawa:ke kanien'kehá:ka rotikwénion ne ahonterihwahténtia'te ne iakenheion'taientáhkhwa. Ion'wé:sen tsi ní:ioht tsi tehsakotíhshnie ne rotinonwaktanión:ni. Sha'té:ioht tsi tehonwatíhshnie ne onkwehshón:'a. tsi nihá:ti ne é:so tsi rotinonwaktanión:ni tánon' tsi nihá:ti ne í:iah eh tehotinonwaktá:ni.

Ioton'onhátie tehonwatíhshnie aronhátien tsi nia'té:kon tho natoktá:ni tsi nikanonhsò:ten.

Kalınawā:ke Kanien'kehā:ka tānon' ne Tetianontarī:kon Kakorahtsherā:kon tho nī:ioht kī:ken tsi wahatirihwanon:we'ne:

- 1) Kahnawa:ke Kanien'keha:ka wahatirihwanon:we'ne:
  - a) tsi kanonhstā:ton ne Kahnawā:ke ahatinonhshōn:ni ne iakenheion'taientāhkhwa ne iakaiē:rike ne kaiē:ri niwāhsen āhsen nikanāktake. Tho nōn:we na'tenhonwatīhshnie tsi nihā:ti ne ē:so tsi rotinonwaktanōn:ni. Akanaktaiēn:take ò:ni' ne aōn:ton tahonwatīhshnie tsi nihā:ti ī:iah eh tehotinonwāktani.

Akarihwison oʻ:ni' ne tetsaronhkwen sha'tehotirihwanonhwe:'on. Kanien'keha:ka tanon' ne Kakorahtshera.

b) Ne ohén:ton tahatí:ta'ne ahonterihwahténtia'te ne Kateri Memorial Hospital Centre Aotiohkwa (né:'e ne í:iah tekakon'tsherakwas)
Tetianontarí:kon Teiontia'torehtáhkhwa nonkwá:ti thonatahshá:ronte. Tsi náhe ne wísk niwáhsen wísk tewen'niáwe shiiohserahsé:ta's. Né:'e ne Kahnawà:ke ratitsénhaiens rotirihwahnirá:ten.

O:nenk tsi né:'e enhátihsere tsi nikaianerenhsero:ten ne onkwehshón:'a ahonwatiia'takéhnha tánon' tsi ní:ioht tsi tahonwatihshnie ne tsi iakenheion'taientáhkhwa.

- c) tánon' ahonwatiríhon kí:ken katióhkwaien ne tahatihthá:ren ne rakó:ra ne ori:wa ronterihwasterítha tóka' ò:ni' né:'e ne raonkwe:ta. Ahatiri'wanón:ton oh ní:ioht tsi taiotaweia'tonhátie ne ohwísta ne aón:ton aontatia'tahtén:ti'ate ne tsi iakenheion'taientáhkhwa.
- 2) Kakoráhtshera wahatirihwanón:we'ne:
  - a) Ne aontahsakó:ion ne Kahnawa:ke Kanien'kehá:ka tsi ní:kon teiotohontsóhon ne ohwísta ne ahontenonhsón:ni ne tsi akenheion'taientáhkhwa.
  - b) Ne tiohserátshon tsi aontahsakó:ion tsi ní:kon teiotonhontsóhon ne ohwísta ne ahonténtia'te ne tsi iakenheion'taientáhkhwa. Ne kaia'takwe'ní:io. Tsi ní:ioht tsi rotirihwisa'á:hon ne Kakoráhtshera tánon' ne Kanien'kehá:ka, tsi aontaweià:thake ne ohwísta tíohtkon ne tsóhsera.
  - c) Ne aontahshakoia'tínionte ne rontetsen'tsherí:io. Ne ahonwatihrha'ne tsi niiaonkwe'tò:ten tehonatonhontsó:ni ne ohén:ton tahatí:ta'ne ne ahonhtén:tia'te ne tsi iakenheion'taientáhkhwa.
- 3) Tsi ní:ioht tsi eniakoia'takéhnha ne tsi iakenheion'taientáhkhwa.
  - a) Tsi tetehshakotitsén:tha
  - b) Kari:wes rotinonwaktanión:ni
  - c) Teiakotitséntha, tsi nihá:ti kwah iah teshontkétskwas.
  - d) Kanā:ta Kaia'takehnha'tsherā:ien.
- 4) Tsi nenwatohserókten ne Kahnawa:ke Kanien'kehá:ka entiakó:ien ne kakoráhtshera ne raotihiatónhsera tsi nón:we nikahia:ton tó: ní:kon ronathwistahní:non tánon' tsi ní:ioht tsi ronahtentiatonhátie ne tsi iakenheion'taientáhkhwa.

  Kwa tó:ken na'tekónteron ienhóntka'we ne ahóntken'se.
  Tsi nihá:ti ne ohén:ton rón:nete ne akwé:ken tenshatiia'tó:rehte tóka' ken akwé:kon tkarihwaié:ri.
- 5) Kanien'kehā:ka rotirihwanonhwē:'on ne tahonwatihshnie tsi nihā:ti ne rotinonwaktanion:ni ne ākte' non:we nithonahtention, tsi ni:kon enwā:ton. Rotirihwanonhwe:'on ne ahonwatinaktotha'se towa' ionāktote.
- 6) Enhatikwé:ni ne kakoráhtshera enhatí:ia'ke tsi thonthwistatenniéhtha tsi roniahtentià:ton ne tsi iakenheion'taientáhkhwa tóka' shí:ken í:iah né:'e thaonsahatíhsere tsi nahò:ten kahiá:ton ne áhsen tánon' tóka' shí:ken í:iah thia'teskaié:ri tsi ní:ioht tsi ronwatiia'takéhnhas ne onkwehshón:'a.

- 7) Kanien'kehā:ka rotirihwanonhwē:on ienhonwatī:nonke tsi nikā:ien enhontenonhshōn:ni ne tsi iakenheion'taientāhkhwas tsi niiō:re enkarihwahnirā:ton tānon' enkahiatonhseronnīhake ne onkwe'tā:ke enkaiēn:take. Tsi nikā:ien aonha kā:ron enhanā:ton nē:'e ki! enthonwā:ion ne ahanonhsaketsko. Teiohserā:ke enhoiēn:take ne ahanonhsisa tānon' tōka' shī:ken ī:iah tehorihwaierī:ton enwā:ton ki' akō:ren enhshontēnhnha'ne. Nē:'e enhatīhsere ne Kahnawa'kehrō:non tsi nī:ioht tsi rotirihwīson ne (Appendix I) Tsi nikā:ien ne rontenonhshōn:ni ō:nenk tsi kēn:'en tetianontarī:ken enthohten:tion.
- 8) Né:'e ne aioió'ten tsi ní:ioht tsi rotirihwanonhwé:'on ó:nenk ne Kahnawà:ke kanien'kehá:ka wahatirihwanón:we'ne ne kahiatonhserá:ke akahia:tonke tsi nahò:ten ia'tehotirihwaienta:se ne ratitsénhaiens tanon' ne kakorahtshera ahatirihwa:ren ne kaianerénhsera tsi nón:we thatiianerenhserón:ni ne kakorahtsherá:kon tsi niiosnó:re enwa:ton.

Tsi nahō:ten entewahtka'we ne kaianerenhseri:son.

-tsi nikā:ien ne kaianerenhserīsen karihwakwennienstha ne ata'karitehtshera kaia'takehnhātshera tānon' waterihwatsterīstha orihwa'shon:'a (Q.R.P. 1977, C.S.5) nē:'e enhatīhsere tsi non:we kī:ken kanonhsase'tsi enhatinonhsaketsko ne tsi iakenheion'taientāhkhwa tsi niio:re ne akwe:kon iakaia'taie:rike tsi nī:ioht tsi rotirihwison tsi rotiianerehseron:ni.

9) Kí:ken waterihwahserón:ni akwé:kon ia'tehoti'nikonhraientá:on.
Tho niiosnó:re enwaterihwahtén:ti tsi niiosnó:re ia'tenwatóhetste
kí:ken ohén:ton tsi tewatthró:ri tsi tkaianerenhserí:son.

Kahnawa: ke ronatatshén: nare,

Kahnawā:ke Kanien'kehā:ka raotirihwā:ke.

> PAIENTERENTEN TWO REVER Lugera Moston Jain Goodland

Kirling who

Kakorahtsherá:kon

Renie Levesque

Camille Laurin M.D.

DOCUMENT: 800-20/025

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FIRST MINISTERS' CONFERENCE
ON
ABORIGINAL CONSTITUTIONAL MATTERS

CONFÉRENCE DES PREMIERS MINISTRES
SUR LES QUESTIONS CONSTITUTIONNELLES
INTÉRESSANT LES AUTOCHTONES

RESOLUTION

Motion portant sur la reconnaissance des droits des Autochtones

RESOLUTION

Motion for the recognition of aboriginal rights in Quebec

Québec

Quebec





# ASSEMBLÉE NATIONALE

### Résolution

Mr. Bévesque (Prime Minister)

Motion for the recognition of aboriginal rights in Québec:

That this Assembly:

Recognizes the existence of the Abenaki, Algonquin, Attikamek, Gree, Huron, Micmac, Mohawk, Montagnais, Naskapi and Inuit nations in Québec;

Recognizes existing aboriginal rights and those set forth in The James Bay and Northern Québec Agreement and The Northeastern Québec Agreement;

Considers these agreements and all future agreements and accords of the same nature to have the same value as treaties;

Subscribes to the process whereby the Sovernment has committed itself with the aboriginal peoples to better identifying and defining their rights — a process which rests upon historical legitimacy and the importance for Québec society to establish harmonious relations with the native peoples, based on mutual trust and a respect for rights;

Urges the Government to pursue negociations with the aboriginal nations based on, but not limited to, the fifteen principles it approved on 9 February 1983, subsequent to proposals submitted to it on 30 November 1982, and to conclude with willing nations, or any of their constituent communities, agreements guaranteeing them the exercise of:

- (a) the right to self-government within Québec;
- (b) the right to their own language, culture and traditions;
- (c) the right to own and control land;
- (d) the right to hunt, fish, trap, harvest and participate in wildlife management;
- (e) the right to participate in, and benefit from, the economic development of Québec,

so as to enable them to develop as distinct nations having their own identity and exercising their rights within Québec;

Declares that the rights of aboriginal peoples apply equally to men and women;

Affirms its will to protect, in its fundamental laws, the rights included in the agreements concluded with the aboriginal nations of Québec; and

Agrees that a permanent parliamentary forum be established to enable the aboriginal peoples to express their rights, needs and aspirations.

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Québec, March 20th 1985

# ASSEMBLÉE NATIONALE

### Résolution

M. Bévesque (Premier Ministre)

Motion portant sur la reconnaissance des droits des Autochtones :

Que cette Assemblée:

Reconnaisse l'existence au Québec des nations abénaquise, algonquine, attikamek, crie, huronne, micmaque, mohawk, montagnaise, naskapie et inuit;

Reconnaisse leurs droits ancestraux existants et les droits inscrits dans les conventions de la Baie-James et du Nord québécois et du Nord-est québécois ;

Considère que ces conventions, de même que toute autre convention ou entente future de même nature, ont valeur de traités ;

Souscrive à la démarche que le gouvernement a engagée avec les Autochtones afin de mieux reconnaître et préciser leurs droits, cette démarche s'appuyant à la fois sur la légitimité historique et sur l'importance pour la société québécoise d'établir avec les Autochtones des rapports harmonieux fondés sur le respect des droits et la confiance mutuelle;

Presse le gouvernement de poursuivre les négociations avec les nations autochtones en se fondant, sans s'y limiter, sur les quinze principes qu'il a approuvés le 9 février 1983 en réponse aux propositions qui lui ont été transmises le 30 novembre 1982 et à conclure avec les nations qui le désirent ou l'une ou l'autre des communautés qui les constituent des ententes leur assurant l'exercice :

- (a) du droit à l'autonomie au sein du Québec;
- (b) du droit à leur culture, leur langue, leurs traditions ;
- (c) du droit de posséder et de contrôler des terres;
- (d) du droit de chasser, pêcher, piéger, récolter et participer à la gestion des ressources fauniques;
- (e) du droit de participer au développement économique du Québec et d'en bénéficier,

de façon à leur permettre de se développer en tant que nations distinctes ayant leur identité propre et exerçant leurs droits au sein du Québec;

Déclare que les droits des Autochtones s'appliquent également aux hommes et aux femmes;

Affirme sa volonté de protéger dans ses lois fondamentales les droits inscrits dans les ententes conclues avec les nations autochtones du Québec; et

Convienne que soit établi un forum parlementaire permanent permettant aux Autochtones de faire connaître leurs droits, leurs aspirations et leurs besoins.

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Québec, se 20 mars 1985

DOCUMENT: 800-20/025

CA1 -C 52

FIRST MINISTERS' CONFERENCE
ON
ABORIGINAL CONSTITUTIONAL MATTERS

CONFÉRENCE DES PREMIERS MINISTRES
SUR LES QUESTIONS CONSTITUTIONNELLES
INTÉRESSANT LES AUTOCHTONES

RESOLUTION

Motion portant sur la reconnaissance des droits des Autochtones

Motion for the recognition of aboriginal rights in Quebec

Québec

Quebec





# ASSEMBLÉE NATIONALE

### Résolution

Mr. Bévesque (Prime Minister)

Motion for the recognition of aboriginal rights in Québec:

That this Assembly:

Recognizes the existence of the Abenaki, Algonquin, Attikamek, Gree, Huron, Micmac, Mohawk, Montagnais, Naskapi and Inuit nations in Québec;

Recognizes existing aboriginal rights and those set forth in The James Bay and Northern Québec Agreement and The Northeastern Québec Agreement;

Considers these agreements and all future agreements and accords of the same nature to have the same value as treaties;

Subscribes to the process whereby the Sovernment has committed itself with the aboriginal peoples to better identifying and defining their rights — a process which rests upon historical legitimacy and the importance for Québec society to establish harmonious relations with the native peoples, based on mutual trust and a respect for rights;

Urges the Government to pursue negociations with the aboriginal nations based on, but not limited to, the fifteen principles it approved on 9 February 1983, subsequent to proposals submitted to it on 30 November 1982, and to conclude with willing nations, or any of their constituent communities, agreements guaranteeing them the exercise of:

- (a) the right to self-government within Québec;
- (b) the right to their own language, culture and traditions;
- (c) the right to own and control land;
- (d) the right to hunt, fish, trap, harvest and participate in wildlife management;
- (e) the right to participate in, and benefit from, the economic development of Québec,

so as to enable them to develop as distinct nations having their own identity and exercising their rights within Québec;

Declares that the rights of aboriginal peoples apply equally to men and women;

Affirms its will to protect, in its fundamental laws, the rights included in the agreements concluded with the aboriginal nations of Québec; and

Agrees that a permanent parliamentary forum be established to enable the aboriginal peoples to express their rights, needs and aspirations.

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Québec, March 20th 1985

# ASSEMBLÉE NATIONALE

## Résolution

M. Bévesque (Premier Ministre)

Motion portant sur la reconnaissance des droits des Autochtones :

Que cette Assemblée:

Reconnaisse l'existence au Québec des nations abénaquise, algonquine, attikamek, crie, huronne, micmaque, mohawk, montagnaise, naskapie et inuit;

Reconnaisse leurs droits ancestraux existants et les droits inscrits dans les conventions de la Baie-James et du Nord québécois et du Nord-est québécois;

Considère que ces conventions, de même que toute autre convention ou entente future de même nature, ont valeur de traités ;

Souscrive à la démarche que le gouvernement a engagée avec les Autochtones afin de mieux reconnaître et préciser leurs droits, cette démarche s'appuyant à la fois sur la légitimité historique et sur l'importance pour la société québécoise d'établir avec les Autochtones des rapports harmonieux fondés sur le respect des droits et la confiance mutuelle;

Presse le gouvernement de poursuivre les négociations avec les nations autochtones en se fondant, sans s'y limiter, sur les quinze principes qu'il a approuvés le 9 février 1983 en réponse aux propositions qui lui ont été transmises le 30 novembre 1982 et à conclure avec les nations qui le désirent ou l'une ou l'autre des communautés qui les constituent des ententes leur assurant l'exercice :

- (a) du droit à l'autonomie au sein du Québec;
- (b) du droit à seur custure, seur sangue, seurs traditions;
- (c) du droit de posséder et de contrôler des terres;
- (d) du droit de chasser, pêcher, piéger, récolter et participer à la gestion des ressources fauniques;
- (e) du droit de participer au développement économique du Québec et d'en bénéficier,

de façon à leur permettre de se développer en tant que nations distinctes ayant leur identité propre et exerçant leurs droits au sein du Québec;

Déclare que les droits des Autochtones s'appliquent également aux hommes et aux femmes;

Affirme sa volonté de protéger dans ses lois fondamentales les droits inscrits dans les ententes conclues avec les nations autochtones du Québec; et

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Québec, se 20 mars 1985

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FIRST MINISTERS' CONFERENCE

ON

ABORIGINAL CONSTITUTIONAL MATTERS



Opening Remarks

by

Zebedee Nungak and John Amagoalik

Inuit Committee on National Issues

Ottawa April 2 and 3, 1985



Thank you Mr. Chairman.

As we enter into this third Constitutional conference on Aboriginal matters, the Inuit Committee on National Issues is confident that agreement on significant amendments is within reach, and we urge all participants to continue with the positive and fresh approach which marked the preparatory meetings leading up to this important event. We would also take this opportunity to join in with others in welcoming the newcomers to this process, Ontario Premier Frank Miller and Prime Minister Brian Mulroney. We hope that their initiation into this sometimes difficult process will be made easier by the fact this year's conference holds the potential for a successful outcome.

The Inuit Committee on National Issues represents the 25,000 Inuit of Labrador, Northern Quebec, and the Northwest Territories, and we are here today with a mandate that is clear and precise - to complete the unfinished business of last year's first Ministers' conference. This, however, will only be possible once we have arrived at an agreement to entrench the Aboriginal People's right to self-government in the Canadian Constitution.

As a distinct people, we Inuit occupy the circumpolar arctic regions of the world. Our culture, language and lifestyle are one, with only slight regional variations. Our family relations transcend political boundaries, international as well as domestic, in our homelands.

Our people have helped establish Canada's sovereignity and territorial integrity over the high arctic area. We have amongst our delegation today, members of our people from Northern Quebec and North Baffin who were moved by the Federal Government in the early 1950's to resolute Bay and Grise Fiord in the high arctic. These people provided the initial labour force which was utilized in the early geological explorations of the high arctic islands. As well, members of the RCMP can testify to the fact that had it not been for the assistance and expertise of our people, their early probes into arctic Canada would have ended in many dismal failures.

Inuit have done much for Canada. We have long taken pride in Canada as our country. Resides having asserted Canada's sovereignty in our homelands, many of our people are members of the armed forces, ready to help defend the country. We possess a profound sense of belonging to Canada and we have always been willing to share the resources of our homeland with other Canadians.

Unfortunately, in many ways, our willingness to share what we have has not been reciprocated by the powers that be. Since the beginning of the Constitutional process and well before, we have sought to corret this.

Although we will again be pursuing the question of self-government, Inuit believe there are good reasons why this conference does not have to be the futile effort of last year. For example most, if not all of the 17 parties around this table, will agree that we have just completed one of the most productive and positive preparatory processes leading up to a Constitutional conference on Aboriginal matters. It would be fair to say that a spirit of reconciliation prevailed over the numerous officials and Ministerial level meetings we attended. Non-beneficial rhetoric fell by the wayside as participants moved on to the business of discussing actual constitutional amendments.

During this preparatory process, the supportive provinces continued to provide the foundation for possible agreement. The Federal Government played a new and vital leadership role, and some of the more reluctant provinces were ready to put aside old mindsets in order to express their genuine concerns and to explore new ideas. The result of this progress enabled the Federal

Government to draft a proposal which incorporates many of the concerns expressed by the 17 parties involved in this process.

The Inuit Committee on National Issues would like to stress that this document represents the closest the Constitutional process has come to producing a workable amendment on self-government.

Being so close to a workable amendment on Aboriginal self-government, we cannot afford to allow the few remaining obstacles to stand in our way. If the political will exists, there is every reason for success, and no excuse for failure.

We take this opportunity to briefly review what these proposed amendments on self-government are all about. Their effect can be neatly summarized in three points:

One - there must be a basic statement of our right to self-government in the Constitution.

Two - there must be some mechanism for negotiating agreements for the establishment of intitutions of self-government and the implementation of our right to self-government.

Three - there must be some way of ensuring that these agreements on self-government will be constitutionally protected.

The Inuit Committee on National Issues believes that this is a very workable approach to amendments on Aboriginal self-government. We also emphasize that we are asking nothing more than basic respect for and Constitutional recognition of our right to self-government.

The implications of the proposed self-government amendment should be obvious, and we are not asking the Federal and Provincial Governments to sign a blank cheque. Those who suggest that entrenchment of our rights would lead to Aboriginal Governments mushrooming across the country to challenge the authority of the Federal and Provincial Governments are misrepresenting the situation. It is clear from the proposals before us that self-government agreements would be the result of detailed negotiations. We would find it difficult to envisage circumstance where the Federal or a Provincial Government would be willing to sign an agreement that they did not fully understand.

Although the Inuit Committee on National Issues is pursuing a positive approach, there are still a numer of concerns which must be resolved before we can be assured of a successful conclusion to this conference.

While a few problems may prove to be difficult, we are confident that the necessary solutions are within the scope and means of the negotiations to be conducted at this table.

What we seek here is our rightful place within this great country, entrenched and protected by its Constitution.

CA1 Z 2 -C 52



Document 800-20/026

Traduction du Secrétariat

#### CONFERENCE DES PREMIERS MINISTRES

SUR LES

QUESTIONS CONSTITUTIONNELLES INTÉRESSANT LES AUTOCHTONES

### Allocution d'ouverture

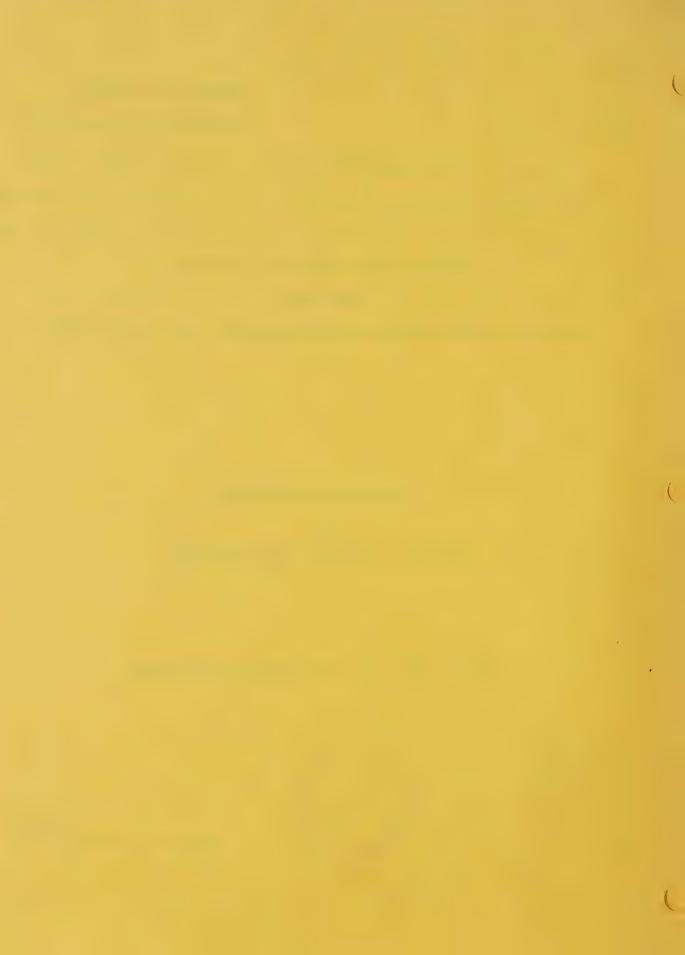
de

Zebedee Nungak et John Amagoalik

Comité inuit sur les affaires nationales



OTTAWA Les 2 et 3 avril 1985



Merci, Monsieur le Président.

Au moment d'entamer cette troisième Conférence sur les questions constitutionnelles intéressant les autochtones, le Comité inuit sur les affaires nationales croit qu'une entente sur des modifications substantielles à apporter à la Constitution est à portée de la main, et nous prions tous les participants de conserver l'enthousiasme et la bonne volonté qui ont marqué les réunions préparatoires à cette importante conférence. Nous aimerions également saisir l'occasion de souhaiter nous aussi la bienvenue aux nouveaux venus à ce processus, le Premier ministre de l'Ontario, M. Frank Miller, et le Premier ministre Brian Mulroney. Nous espérons que leur initiation à ce processus parfois difficile sera facilitée par le fait que la conférence de cette année peut avoir une issue heureuse.

Le Comité inuit sur les affaires nationales représente 25 000 Inuit du Labrador, du Nouveau-Québec et des Territoires du Nord-Ouest, et nous sommes venus ici avec un mandat clair et précis - terminer le travail qui a été commencé lors de la conférence des Premiers ministres de l'an dernier. Cependant, la chose ne sera possible que lorsque nous serons parvenus à une entente visant l'inscription du droit à l'autonomie gouvernementale des autochtones dans la Constitution canadienne.

En tant que peuple distinct, nous, les Inuit, occupons la région arctique circumpolaire de la planète. Notre culture, notre langue et notre mode de vie sont un, avec quelques légères variantes d'une région à l'autre. Nos relations familiales transcendent les frontières politiques, internationales aussi bien qu'intérieures, de nos terres ancestrales.

Notre peuple a contribué à l'établissement de la souveraineté du Canada et à la défense de son intégrité territoriale dans la région du Haut-Arctique. Notre délégation comprend des Inuit du Nouveau-Québec et du nord de l'île de Baffin qui ont été installés par le gouvernement fédéral, au début des années 50, à Resolute Bay et à Grise Fiord, dans le Haut-Arctique. Ces gens ont constitué la première main-d'oeuvre utilisée lors des premières explorations géologiques des îles de cette zone. De même, des membres de la GRC peuvent témoigner du fait que, n'eût été de l'aide et des connaissances de notre peuple, leurs premières opérations dans l'Arctique canadien se seraient souvent soldées par des échecs lamentables.

Les Inuit ont beaucoup fait pour le Canada. Depuis longtemps, nous sommes fiers d'être citoyens de ce pays. En plus d'avoir défendu la souveraineté du Canada sur nos terres ancestrales, beaucoup d'entre nous sont entrés dans les forces armées, et sont prêts à défendre le pays. Nous avons un

sentiment profond d'appartenance au Canada et nous sommes toujours disposés à partager les ressources de nos terres ancestrales avec les autres Canadiens.

Malheureusement, sous bien des aspects, les autorités concernées n'ont pas toujours répondu par la réciproque à notre volonté de partager ce que nous avons. Nous cherchons à faire corriger cette situation depuis le début de l'opération constitutionnelle, et même depuis bien plus longtemps.

Nous allons de nouveau débattre la question de l'autonomie gouvernementale, mais les Inuit estiment qu'il y a de bonnes raisons pour que cette conférence ne soit pas vaine comme celle de l'an passé. Par exemple, la plupart, sinon toutes les 17 parties réunies à cette table, seront d'accord pour dire que nous venons de terminer une des périodes préparatoires les plus productives et les plus positives qui aient jamais précédé une conférence constitutionnelle sur les questions intéressant les autochtones. Il faut reconnaître que c'est l'esprit de réconciliation qui a dominé les nombreuses réunions de fonctionnaires et de ministres auxquelles nous avons assisté. Les participants laissaient de côté la vaine rhétorique pour discuter concrètement de la question des modifications constitutionnelles.

Au cours de cette période préparatoire, les provinces favorables ont continué à fournir les bases d'une entente possible. Le gouvernement fédéral a joué un rôle de dirigeant qui était nouveau et essentiel, et certaines des provinces les plus réticentes se sont montrées disposées à mettre de côté certains vieux préjugés, ce qui leur a permis d'exprimer leurs préoccupations véritables et d'étudier des idées nouvelles.

C'est ainsi que le gouvernement fédéral a pu rédiger une proposition en tenant compte de nombre des préoccupations exprimées par les 17 parties concernées. Le Comité inuit sur les affaires nationales aimerait souligner que ce document constitue ce que le processus constitutionnel a produit de plus proche d'une modification réalisable de la Constitution sur l'autonomie gouvernementale.

Maintenant que nous sommes si près d'apporter à la Constitution une modification sur l'autonomie gouvernementale des autochtones, nous ne pouvons pas nous permettre de nous laisser barrer la route par les quelques obstacles qui subsistent. S'il y a vraiment une volonté politique, toutes les conditions de la réussite sont réunies, et il n'y a pas de raison d'échouer.

Nous saisissons cette occasion pour examiner brièvement en quoi consistent les modifications proposées. Elles peuvent se résumer en trois points:

Premièrement, la Constitution doit faire clairement état de notre droit à l'autonomie gouvernementale.

Deuxièmement, il doit y avoir un mécanisme de négociation des ententes visant l'établissement d'institutions gouvernementales autonomes et la mise en oeuvre de notre droit à l'autonomie gouvernementale.

Troisièmement, il doit y avoir un moyen de garantir que ces ententes sur l'autonomie gouvernementale seront protégées par la Constitution.

Le Comité inuit sur les affaires nationales estime que c'est là une façon très réaliste d'envisager les modifications à apporter à la Constitution au sujet de l'autonomie gouvernementale des autochtones. Nous soulignons également que nous ne demandons rien de plus que le respect fondamental, et la reconnaissance constitutionnelle, de notre droit à l'autonomie gouvernementale.

Les répercussions de la modification proposée au sujet de l'autonomie gouvernementale devraient être évidentes, et nous ne demandons pas aux gouvernements fédéral et provinciaux de nous signer un chêque en blanc. Ceux qui laissent entendre que l'inscription de nos droits dans la Constitution donnerait lieu, dans tout le pays, à une prolifération de gouvernements

autochtones qui défieraient l'autorité des gouvernements fédéral et provinciaux se font une mauvaise idée de la situation. Il ressort clairement des propositions avancées que les ententes sur l'autonomie gouvernementale seraient le résultat de négociations détaillées. Il nous est difficile d'imaginer que les gouvernements fédéral et provinciaux pourraient signer une entente qu'ils ne comprennent pas pleinement.

Quoique le Comité inuit sur les affaires nationales s'en tienne à une approche positive, il subsiste un certain nombre de préoccupations qui devront être levées pour que nous puissions avoir l'assurance de la conclusion heureuse de cette conférence.

Même si certains problèmes peuvent être délicats à régler, nous avons bon espoir que les solutions qui s'imposent sont à la portée des négociations qui vont se dérouler à cette table.

Ce que nous voulons obtenir ici, c'est de faire protéger par la Constitution, en l'y inscrivant, la place qui nous revient de droit dans ce grand pays.



DOCUMENT: 800-20/027

CA1 Z 2 -C 52

FIRST MINISTERS' CONFERENCE
ON
ABORIGINAL CONSTITUTIONAL MATTERS

Statements by the Prairie Treaty Nations Alliance



OTTAWA, Ontario April 2 and 3, 1985



MR. PRIME MINISTER, HONOURABLE PREMIERS, MY FELLOW NATIVE PEOPLE, LADIES AND GENTLEMEN. I AM HERE AS AN ELECTED CHIEF OF THE STONEY INDIAN NATION FROM TREATY NO. 7 OF ALBERTA. I HAVE BEEN DELEGATED BY MY FELLOW CHIEFS TO MAKE A STATEMENT ON BEHALF OF THE TREATY INDIAN NATIONS WHO HAVE FORMED A TREATY INDIAN ORGANIZATION, THE P.T.N.A.

WE WANT TO RECORD OUR THANKS TO THE NATIONAL CHIEF OF THE A.F.N., CHIEF DAVID AHENAKEW, FOR HIS SUPPORT OF THE P.T.N.A. ORGANIZATION AND IN GIVING US THIS OPPORTUNITY TO TABLE THESE DOCUMENTS ON BEHALF OF OUR MEMBER TREATY INDIAN NATIONS. THESE PAPERS CLEARLY EXPLAIN OUR STAND ON WHY WE ARE NOT PARTICIPATING IN THIS CONSTITUTIONAL CONFERENCE FOR REASONS WE WANT TO EXPLAIN.

WE DO, HOWEVER, WANT TO PRESENT OUR POSITION REGARDING OUR TREATIES.

TO US AS INDIAN PEOPLE THE SACRED TREATY AGREEMENTS ARE OF UTMOST IMPORTANCE

TO THE P.T.N.A. MEMBERS.

FOR THE PAST SEVERAL MONTHS OUR ORGANIZATION HAS BEEN REQUESTING

SEPARATE REPRESENTATION AT THIS MEETING. THIS IS NOT AN UNREASONABLE REQUEST

WHEN YOU CONSIDER THAT THE METIS NATIONAL COUNCIL WERE GRANTED SEPARATE SEATS

AT THESE CONFERENCES, SEATS WHICH THEY STILL RETAIN ALONG WITH THEIR ORIGINAL

PARENT ORGANIZATION, THE NATIVE COUNCIL OF CANADA. IT WAS ONLY YESTERDAY

AFTERNOON THAT WE WERE INFORMED BY THE PRIME MINISTER THAT OUR PEOPLE WOULD

NOT BE GRANTED OFFICIAL RECOGNITION AT THIS CONFERENCE. WE ARE VERY DISAPPOINTED

BY YOUR DECISION TO DENY OUR REQUEST TO BE REPRESENTED AS ONE OF THE

ABORIGINAL GROUPS AT THIS FIRST MINISTERS' MEETING TODAY. WE WANT TO

EMPHASIZE THAT, AS TREATY PEOPLE, WE ARE SEPARATE FROM THE A.F.N., AND THE OTHER ABORIGINAL GROUPS HERE; AND THAT INDEED WE ENJOY SPECIAL RIGHTS BASED UPON OUR TREATIES WITH THE CROWN.

WE ARE GREATLY DISAPPOINTED THAT THE TREATY INDIAN NATIONS' INTERPRETATIONS
AND UNDERSTANDING OF THE TREATIES HAVE NOT BEEN ADEQUATELY DISCUSSED AT THE
PREVIOUS CONSTITUTIONAL CONFERENCES, AND THAT THIS YEAR WE ARE NOT BEING GIVEN
THE KIND OF REPRESENTATION DEMANDED BY THE TREATY INDIAN NATIONS.

WE WANT TO STATE UNEQUIVOCALLY THAT THE A.F.N. DOES NOT REPRESENT THE MEMBER TREATY INDIAN NATIONS OF TREATY NO. 1, TREATY NO. 4, TREATY NO. 5, TREATY NO. 6, TREATY NO. 7, TREATY NO. 8 and TREATY NO. 10, COVERING ALBERTA, SASKATCHEWAN, SOUTHERN MANITOBA AND NORTH EASTERN B.C.

WE BELIEVE THAT THE CREATOR PLACED US HERE ON THIS GREAT ISLAND

AND TAUGHT US TO LIVE IN HARMONY WITH THE SEASONS, WE WANT TO PASS ON OUR

PHILOSOPHY AND PRESERVE OUR HERITAGE FOR OUR FUTURE GENERATIONS. OUR

PHILOSOPHIES AND TRADITIONS MUST BE UNDERSTOOD AND RESPECTED BY YOUR

GOVERNMENTS IF THERE IS TO BE A WORKABLE RELATIONSHIP BETWEEN THE P.T.N.A.

AND THE GOVERNMENT OF CANADA.

WHEN THE EUROPEAN NATIONS FIRST CAME OVER TO THIS COUNTRY, THE TREATY

MAKING PROCESS WAS VERY IMPORTANT IN MAINTAINING INTERNATIONAL RELATIONS

BECAUSE OF THE INTEREST IN OUR LAND AND ITS BOUNTIFUL RESOURCES. THE TREATIES

WERE VERY IMPORTANT TO THE FRENCH, THE ENGLISH, AND THE SPANISH, AND THE

TREATIES REMAIN A VITAL AND SACRED PART OF OUR BILATERAL RELATIONS WITH

THE GOVERNMENT OF CANADA.

WE WONDER IF YOU, MR. PRIME MINISTER, SHARE THAT ESSENTIAL CONCERN IN RESPECTING OUR SOVEREIGHTY, AS YOUR FOREFATHERS DID WHEN THEY FIRST ARRIVED ON THIS GREAT ISLAND OF NORTH AMERICA?

THE RELATIONSHIP BETWEEN THE GOVERNMENT OF CANADA AND THE P.T.N.A.

MEMBERS IS BASED ON THESE INTERNATIONAL TREATIES NOW ENTRENCHED IN THE

CANADIAN CONSTITUTION. A TRUST RELATIONSHIP CONTINUES TO EXIST BETWEEN THE

TREATY INDIAN NATIONS AND THE CROWN - A FIDUCIARY TRUST RELATIONSHIP JUST

RECENTLY CONFIRMED BY THE SUPREME COURT OF CANADA IN NOVEMBER, 1984 CONCERNING

THE MUSQUEAM INDIAN NATION OF B.C.. THE RELATIONS BETWEEN CROWN CANADA AND

THE INDIAN FIRST NATIONS IS, HAS ALWAYS BEEN, AND WILL CONTINUE TO BE ON A

NATION TO NATION BASIS. SECTION 9] (24) OF THE CANADA ACT, 1867, GRANTS

EXCLUSIVE AUTHORITY TO THE FEDERAL GOVERNMENT TO ENTER INTO FORMAL RELATIONSHIPS

WITH FIRST NATIONS. IN OUR VIEW, THIS BILATERAL FORUM IS THE ONLY APPROPRIATE

ONE TO CONDUCT FEDERAL CONSTITUTIONAL TREATY NEGOTIATIONS OR THE RENOVATION OF

TREATIES.

THERE MUST NOT BE ANY CHANGES MADE TO SECTION 9] (24) AT THESE FIRST MINISTERS MEETINGS.

WE REJECT THE FEDERAL GOVERNMENTS ATTEMPTS TO TREAT US AS COLONIES BY
PROPOSING TO LEGISLATE IN THE AREAS OF INDIAN GOVERNMENT AND INDIAN CITIZENSHIP,
SUCH AS BILL C-31 NOW BEING PROPOSED BY YOUR MINISTER OF INDIAN AFFAIRS. OUR
INDIAN FIRST NATIONS MAINTAIN OUR RIGHT TO DETERMINE OUR OWN CITIZENSHIP AND
TO EXERCISE JURISDICTION THROUGH OUR INDIAN GOVERNMENTS. WE HAVE NEVER
SURRENDERED THESE POWERS TO CANADA.

THE TREATIES REMAIN UNFINISHED BUSINESS AND REMAIN UNFULFILLED UNDER THE CONSTITUTION ACT 1982.

WE REMIND YOU THAT UPON PATRIATION, CANADA WAS CAUTIONED BY THE
LORD JUSTICE OF GREAT BRITAIN, TO PROTECT AND TO PRESERVE THE RIGHTS AND
FREEDOMS OF THE ABORIGINAL PEOPLES, AND IN PARTICULAR, TO PROTECT THE SPIRIT
AND OBLIGATIONS OF THE TREATIES.

IN VIEW OF THAT OBLIGATION CLEARLY EXPRESSED BY LORD DENNING, WE THE
P.T.N.A. MEMBERS HAVE COLLECTIVELY DECIDED NOT TO PARTICIPATE IN THESE
DISCUSSIONS UNDER THE PRESENT CONDITIONS AND FORMAT. THEREFORE, ANY DECISIONS
OR AGREEMENTS THAT MAY RESULT FROM THESE MEETINGS WILL NOT BE RECOGNIZED AS
BINDING UPON THE MEMBER NATIONS OF THE P.T.N.A.. IT IS OUR FIRM POSITION
THAT THERE CANNOT BE ANY CHANGE TO OUR RELATIONSHIP WITH THE CROWN WITHOUT
OUR CONSENT.

WITH THESE INTRODUCTORY REMARKS, MR. CHAIRMAN, I WILL NOW CALL UPON CHIEF
HAROLD CARDINAL AND CHIEF SOL SANDERSON TO CONCLUDE OUR PRESENTATION ON BEHALF
OF THE P.T.N.A.

#### PRAIRIE TREATY NATIONS ALLIANCE

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### PRAIRIE TREATY NATIONS ALLIANCE 274 Garry Street Winnipeg, Manitoba

STATEMENT

PRESENTED TO THE RIGHT HONOURABLE BRIAN MULRONEY

PRIME MINISTER OF CANADA

AT THE FIRST MINISTERS' CONFERENCE

ON CONSTITUTIONAL AND ABORIGINAL AFFAIRS

OTTAWA, APRIL 2-3, 1985

Mr. Prime Minister

For the past several months, we have lobbied your Office so that, at this conference, the Prairie Treaty Nations Alliance (PTNA) would be accorded standing by being provided with a seat to represent Treaty and subsisting aboriginal interests. As of last week, you had not responded to our official request for this seat. We, therefore, resorted to the judicial system. The ruling of Mr. Justice Krever of the Ontario Supreme Court, last Friday, affirms our position that this is a political decision to be made by your Office. We are now forced to conclude that you have explicitly denied our request to be represented as a group, separate from the Assembly of First Nations - with distinct and unique rights and interests. The AFN is not representative of our interests because of some basic and fundamental differences in philosophy and priorities.

Consequently, we have collectively decided to not participate in these discussions. For that reason, we would request that the parties to the conference refrain from all deliberation with regard to our treaties. Any decisions or agreements that may impinge on our treaties as a result of this conference will be considered unwarranted incursions into our jurisdiction and therefore null and void. It is our firm position that there cannot be any change to our relationship with the Crown without our consent.

However, before we leave these discussions, we would like to provide you with the following to give PTNA's perspective on its relationship with Canada which will, hopefully shed some light on the type of dialogue we would be prepared to address:

- 1) Our Creator gave us this land and the life on it for our use. Along with this gift is the responsibility to maintain it for future generations. The sacred pipe was a symbol of sovereignty given to us to remind us of this relationship. It explains our place within the universe. It symbolizes our holistic approach to life. Our holistic philosophy in many ways conflicts with western linear philosophy. Our philosophy must be understood and appreciated by your governments if there is to be a workable partnership between the PTNA and the Government of Canada.
- The relationship between Canada and the PTNA is based on International Treaty Law. The First Nations, as independent sovereigns, had the power and ability to enter into treaties with other nations. International law describes the relationship between nations as a relationship of sovereign equality. This principle applies when the nations are equal in strength and also when nations vary greatly in size or power. The fact that our populations were small did not alter the need, in international law, for our relationship with the Crown to be established on the basis of free consent. It is within this perspective that any dialogue or discussion must take place.
- 3) A trust relationship continues to exist between the PTNA and the Crown. This trust relationship was best described by Chief Justice Marshall in Worcester v. Georgia (1832) 31 U.S. (6 pet.) when he stated:

"The settled doctrine of the Law of Nations is that a weaker power does not surrender its independence - its right to self-government - by associating with a stronger nation and taking it's protection. The weak state, in order to provide for its safety, may place itself under the protection of one more powerful without stripping itself of the right of government and ceasing to be a state."

Therefore, the relationship between Canada and the First Nation is, has always been and will continue to be on a Nation to Nation basis founded upon our consent.

4) The PTNA has a fundamental problem with this conference because of some conflicting laws within the Constitution of Canada. Section 91(24) of the Constitution Act (1867) grants exclusive authority to the Federal Government to enter into

relationships with First Nations. On the other hand, Section 37 allows for provincial involvement in the making of the relationships between the Federal Government and the First Nations. Which section is paramount and how is this apparent conflict to be reconciled?

Without the reconciliation of this inconsistency, we cannot approve of a multilateral forum such as exists here. In our view, a bilateral forum is the only appropriate forum. However, there continues to exist a recognized Federal constitutional treaty-making power. This process does not require provincial concurrence. Nevertheless, it does not preclude their consultation.

- 5) Reject Canada's attempts to treat us as colonies by proposing legislation in the areas of Indian government and Indian citizenship. Our Indian Nations maintain our right to determine our own citizenship and to exercise sovereignty through our Indian governments. We have never surrendered these powers to Canada.
- 6) There is unfinished business from the Constitution Act, 1867, including:
  - a) The Treaties state that our Nations did cede, release, surrender and otherwise yield up to the Crown all of our rights to our land forever. Our people never understood or agreed to such a clause. Yet Canada has used this clause to assume full control over our lands and our people without our consent. This blatent fraud must be addressed:
  - b) In 1930 Canada and the Prairie provinces concluded the Natural Resource Transfer Agreement, wherein Canada gave to the provinces all the resources without our consent or participation. This Transfer violates our understanding of the resources which are vested in our Nations protected by aboriginal and treaty rights. We say that those resources were beyond the power of the Federal Government to grant.
  - C) The Supreme Court of Canada has ruled that the Federal Government may extinguish our treaty rights without our consent through Acts of Parliament. We see this principle as a shameful violation of our fundamental relationship with the Crown.

In closing, we would like to commend the good faith but misguided attempts by Canada to try and resolve the problems that have soured the original relationship. However, we also want to make it abundantly clear that a unilateral, colonial approach will not result in peaceful coexistence between Canada and the First Nations. We remind you that upon patriation, Canada was afforded conditional sovereignty: conditional on Canada protecting and preserving the rights and freedoms of the aboriginal peoples and, in particular, to protect the spirit and obligation of the treaties.

Yours truly,

Chief Sol Sanderson, F.S.I.N.

Wif mekongalf President Wilf McDougall, I.A.A.

chief Ken Courchene, Treaty #1

Arker Bl. MARK Headman Richard Behn, Treaty \$8 (B.C.)

## THE CONSTITUTIONAL POSITION OF THE PRAIRIE TREATY NATIONS ALLIANCE

#### I. GENERAL PRINCIPLES

The Indian First Nations of the Prairie Treaty
Nations Alliance have joined together to restate, clearly and
forcefully, the nature of our relationship with the Crown and
the Government of Canada.

The First Nations, as independent sovereigns, had the power and ability to enter into treaties with other nations. International law describes the relationship between nations as a relationship of sovereign equality. This principle applies when the nations are equal in strength and when nations vary greatly in size or power. The fact that our populations were small did not alter the need, in international law, for our relationship with the Crown to be established on the basis of free consent.

The law established by the Crown to regulate their dealings with the First Nations recognized the need for consent and treaties. These principles underly the Royal Proclamation of 1763, the Constitution Act, 1867, the Rupert's Land and North-Western Territory Order, and various other parts of Canadian law down to the restatement of certain of these principles by the Supreme Court of Canada in November, 1984, in the decision in Guerin v. The Queen. While in other parts of Canada the relationship of First

Nations to Canada may be defined in terms of aboriginal rights or land claims settlements, the relationship of the First Nations of the Prairie Treaty Nations Alliance is rooted in the treaties negotiated between our leaders and the representatives of the Crown.

The treaties confirmed a continuing relationship of political equality between the First Nations and the Crown. We did not give up any rights of self-government by the sharing arrangements in the treaties. The First Nations retained their right of self-determination. That right has been recognized in the International Covenant on Civil and Political Rights, signed by Canada in 1976. Our right of self-determination includes the sovereign power to determine our own citizenship without interference from any Canada laws. The sharing arrangements gave rise to a continuing special relationship between the Crown and Government of Canada and the First Nations. The special relationship involved a fiduciary obligation on the part of Canada, which involves not only the proper management of Indian assets, but a responsibility as the stronger power, to respect the principle of political equality to protect and enhance the rights of the First Nations to self-government self-determination. The obligation is of the highest order. It is with the Crown in the right of Canada represented by the federal government. It cannot be delegated to any other level of government. The relationship was to be a positive one for both the First Nations and the Government of Canada. Instead it became a relationship of repression and dependence. Our task continues to be the re-establishment of the original treaty relationship. The relationship must be properly understood and defined so that our First Nations and Canada can prosper as partners today and for generations to COTTO .

#### II. CONTENTS OF THE TREATIES

#### 1. INTRODUCTION

The Prairie Treaty Nations Alliance (PTNA) represents those peoples who are the beneficiaries to the treaties entered into between their Nations and the Crown now in right of Canada. Primarily located in the prairies, and the northeastern portion of British Columbia, the peoples represented by the PTNA are beneficiaries mainly to those treaties known as the "numbered" treaties. They entered into

those treaties in the latter 18th century after the American Revolutionary War with adhesions signed up to the 1970's. Beneficiaries of the Jay Treaty and the Dakota Treaties of Alliance with the British Crown are also represented by the PINA.

Prior to the coming of the white man to the Americas, Indian Nations recognized the sovereignty of one another by forming compact, treaties, trade agreements and military alliances. They understood that it was necessary to enter into arrangements with other nations, tribes or bands in order to survive cooperatively and to live in an orderly and organized manner. Treaties were, therefore, standard mode of relations.

That world view is fundamental to understanding the great discrepancies between non-Indian laws which have tended to minimize the capacity of Indian people to enter into international treaties and Indian peoples interpretations of the treaties and the process of relating they established. The PINA views the constitutional process as one of the processes presently in place to be a continuation of the treaty process established by their forefathers, and as a means of correcting the historical record. Their respect of the treaties is premised on their respect of their forefathers capacity and ability to enter into treaties. The mistakes made earlier include improper records of the terms entered into by the Indian signatories and the lack of any comprehensive review as envisaged by their forefathers in order to update the treaties on a periodic basis in order to accommodate changes in circumstances.

The Indian Nations at the time of contact with non-Indians effectively controlled identifiable territory within these lands now known as Canada. Within such

their peoples. These governments had political, economic, adjudicative and military powers as well as structured forms for decision-making. These Bands or Tribes were sovereign within their territory, not being subject to any other power, and under no other effective control. By their arrangements and compacts with each other and with the British Crown, they demonstrated their authority and capacity to enter into treaty relations as subjects of international law. They have continued their style of arrangements as evidenced in the Convention signed to establish the PTNA, and by their treaties with other First Nations in Canada, the United States, and the other parts of the world on educational and cultural exchanges.

The British Crown acknowledged the title of the Indians to the territory. At no time was it claimed that such territorial rights could be extinguished by occupation or conquest. On the contrary, it was declared in the Royal Proclamation of 1763 and afterwards that all dealings with the Indians were to be on the basis of mutual respect and consent and Indian lands were only to be acquired by the Crown with such consent. Without it, no individual subject of the British Crown could purchase, settle upon or take possession of Indian land. Neither might local settle governments grant patents of land or survey warrants. Crown acknowledged the capacity of the Indians to enter into Treaties, itself choosing to designate the instruments as Treaties, rather than as agreements or contracts.

The British Crown, rather than any department of government or ministry, entered into the treaties. The negotiations leading to their conclusion were conducted on the basis of mutual sovereignty. Mutal acceptance of them was solemnly accompanied by ceremonies appropriate to the

conclusion of international treaties. Further there have been adhesions to these treaties. This is the appropriate method for later participation by other parties in international treaties.

#### 2. THE MEANING OF TREATIES

To understand the present status of the treaties, it is necessary to identify those treaties:

Treaty No. 1, the Stone Fort Treaty covering southern Manitoba, was entered into by the Ojibway Nations on August 12th, 1871;

Treaty No. 2, the Manitoba Post Treaty, for our purposes, covering a small portion of southeastern Saskatchewan was entered into by the Ojibway, and Cree Nations in August 21, 1871;

Treaty No. 4, the Qu'Appelle Treaty, covering most of southern Saskatchewan was entered into by the Cree, Ojibway, Assiniboine Nations, in September 15th, 1874, with adhesions signed later;

Treaty No. 5, the Winnipeg Treaty, covering the eastern part of Saskatchewan was entered into by the Ojibway, and Cree Nations in 1875 with later adhesions;

Treaty No. 6, the Treaty of Fort Carleton and Pitt, was entered into on August 23, and 28th, and September 7, 1876 with at least nine (9) adhesions up to 1976 by the Cree, Assimiboine and Dene Nations and cover Saskatchewan and Alberta;

Treaty No. 7, the Blackfoot Treaty, covering the southern portion of Alberta was entered into by the Blackfoot, Stoney, Blood, Sarcee, and Peigan Nations on September 22, 1977;

Treaty No. 8, covering the northwestern corners of Saskatchewan, northern Alberta, and northeastern British Columbia was signed by the Cree and Dene Nations in 1899 with adhesions signed in 1900;

Treaty No. 10, covering a large portion of northern Saskatchewan and signed by the Cree and Dene Nations in 1906 and 1907.

The distribution of powers as evidenced by treaties was done consensually. It becomes important, then, to understand each sides motivation as to the terms of the treaties. The point to remember, however, is that all of the powers were once held by the bands as Nations, not the Canadian or any other Government. Whatever powers the federal government may exercise over Indian Nations it received from the bands, not the other way around. What then did Indians give to the Canadian Government, and what did they retain for themselves? The understanding of Indian people must be inferred from speeches recorded at the treaty councils or through oral history. Furthermore, Indian positions have to be understood in the context of specific Indian cultures, and the conditions of the day such as policies and political matters all of which affected the terms which were not properly recorded. Such variables are the evidence by which we can understand the treaty terms.

By the written terms of the treaties, the Commissioners acting on behalf of the Crown agreed to the

## Indian Nations retaining the following:

- (1) To reserve or set aside for the sole and exclusive use of the respective Bands or Tribes plots of land to be allocated in the manner prescribed in the respective agreements.
- (2) That the lands so reserved would only be sold, leased or otherwise disposed of by the Crown for the use and benefit of the respective Indian Bands or Tribes, with their consent thereto first had and obtained.
- (30 To provide medicine chests and maintain schools for the Indian inhabitants of the reserves, and assistance in economic development.
- (4) That the Bands or Tribes should have hunting, fishing, trapping rights over the lands referred to in the Treaties.

During the preliminary negotiations and in order to induce the Indian nations to execute the treaties, the Commissioners agreed orally that the Indians could also retain the following powers, and which powers are part of the treaties:

(1) Their tribal autonomy would be respected and they would suffer no direct or indirect compulsion to alter their traditional ways of life. The Commissioner explained that what was offered to them would not take away from their way of life as you will have it in the future as you have it now as what I offer is additional to what you already have, thus, implying that the sovereignty of the Indian Nations would continue.

- (2) They would continue to enjoy the unrestricted rights to hunt, fish, trap and gather over their traditional lands (whether ceded or not), to the exclusion of non-Indians.
- (3) They would continue to enjoy all rights in respect of their traditional lands.
- (4) They would be provided with prompt and adequate relief in times of famine, and proper medical care, and those who were aged or infirm would receive all necessary attention.
- (5) They would not be conscripted into military service nor taxed, which implies they are allies rather than subjects.

#### 3. PRESENTATIONS TO THE FIRST MINISTERS' CONFERENCES

The sacredness and importance of treaties was recently confirmed by the various submissions of the different treaty Indian Nations at the 1983 and 1984 First Ministers, Conferences which are now quoted:

(1) "The treaties are of utmost importance to Indian people because they guarantee our way of life, and help to preserve our traditional ways, and beliefs, and will enable future generations to follow and continue with the important teachings of our forefathers.

The Indian Nations of southern Alberta signed Treaty No. 7 at Blackfoot Crossing on September 22, 1877.

The Treaty recognized the special status of Indian People as the aboriginal habitants placed on this Great Island (North America) by the Great Spirit.

The Treaty established the terms of peace, law, order, and inter-governmental relationships between the signatory powers."

THE RIGHT TO BE INDIAN,
A STATEMENT ON THE CONSTITUTIONAL
ACT 1982 AND RECOMMENDATIONS BY THE
STONEY INDIAN NATION OF TREATY NO. 7
PRESENTED TO THE RIGHT HONOURABLE
P.E. TRUDEAU, PRIME MINISTER OF
CANADA, ASSEMBLY OF FIRST NATIONS

(2) "It is the position of the Blood Tribe that they have fulfilled their part of the treaty agreement with Canada, namely; to share their land subject to a reservation. However, Canada has had a dismal record in carrying out its part of the agreement. Canada puts a very limited and restrictive interpretation on its part of the agreement, which is a cause for some of the strained relationship between the Indian peoples and Canada. It is the position of the Blood Tribe that treaties whether categorized as legal or not, are nevertheless binding on both parties."

THE CONSTITUTIONAL POSITION ON THE BLOOD TRIBE, ASSEMBLY OF FIRST NATIONS

(3) The Peigan Tribe tabled their declaration on treaties, which among other things, asserts that an inquiry and clarification process is now necessary. (4) "The First Nations who signed treaties believed they had entered into a Sacred Covenant with the Crown. Such treaties, form our Indian perspective, were viewed as mutually-acceptable "living arrangements", and enabled both parties to respect each others differences, and to live in harmony with this beautiful land. The Treaties established a basis for harmonious relations between our peoples.

However, an increasing divergence from the original intent of the treaties, both those which are written and those which are oral, has resulted in a steady deterioration in the well-being of Indian people, and in Federal relations with the First Nations generally. During the past century, the original treaty guarantees have been submerged under federal and provincial statutes, regulations, programs and policies. Some of these were specifically designed to smother and assimilate our people. We cannot allow this termination process to continue."

STATEMENT OF SPIRIT AND INTENT OF TREATIES IN SUPPORT OF THE ASSEMBLY OF FIRST NATIONS, PRESENTED BY CHIEF JOHN SNOW, ASSEMBLY OF FIRST NATIONS.

(5) The presentation of the Indian Nations of Hobbema to the S.37(1) conference on Aboriginal and Treaty Rights, March 15-16, 1983, in reference to the right of selfdetermination states,

"It has been established by long historical practice, and has been recognized by treaty. For example, Treaty \$6, signed in 1876 with the Plain and Wood Cree

Indians provides:

They (the Indians) promise and engage that they will in all respects obey and abide by the law, and they will maintain peace and good order between each other, and also between themselves and other tribes of Indians.

and Treaty #7 signed in 1877 with the Blackfoot of Bow River and Fort MacLeod provides:

They will maintain peace and good order between each other and between themselves and other tribes of Indians, and between themselves and others of Her Majesty's subjects, whether Indians, Half Breeds or Whites, now inhabiting or hereafter to inhabit, any part of the said ceded tract. The direction in the above treaties to maintain peace and order was a general mandate in treaties which acknowleged (as did many of the instruments establishing British colonial self-government) the right of the Indian people to preserve public order and govern themselves. It is not too much to say that such a right has executive, legislative and judicial dimensions. While we remain an original people within the Canadian Confederation, we also make and administer our own laws, and resort to our own dispute-resolving processess in with the treaties and traditional accordance practices."

PRESENTATION OF THE INDIAN NATIONS OF HOBBEMA TO THE S.37 (1) CONFERENCE ON ABORIGINAL AND TREATY RIGHTS. ASSEMBLY OF FIRST NATIONS.

(6) The Federation of Saskatchewan Indian Nations through their representative Chief Sol Sanderson stated at the 1983 First Ministers' Conference that the treaties are the foundation of our relations with Canada. By the treaties our nations retained their powers over their peoples and lands including their legislative, adjudicative, and executive powers and institutions thereof. Pursuant to the treaties, the Indian Nations have agreed to co-exist peacefully with Canada, which treaties must be reviewed to clearly establish the rules and regulations of our co-existence and sharing of the land.

#### III. THE ELEMENTS OF A CROWN-TREATY FIRST NATIONS PROCESS

#### THE TREATIES

Treaties were entered into directly between representatives of the Corwn and of the First Nations. Each side recognized the power of the other to enter into formal, binding treaties as independent powers. The treaties established a relationship with obligations on each side. As in any other treaty situation, the Indian First Nations and the Crown, by agreement can modify or expand the terms of the treaty relationship. New treaties, adhesions to old treaties or "renovation" agreements restating the spirit and terms of treaties, all come within the protection of Section 35 of the Constitution Act, 1982. All treaties between the Crown and First Nations are bilateral, involving the federal government alone representing the Crown. Governments of provinces were not involved in the treaties in western Canada (even where treaties and adhesions were signed after provincial governments had been established). Though Ontario signed Treaty Nine, the courts have ruled that the province had no power or authority to deal with the issues of First Nations rights. Only the federal government was capable of such actions (R v Batisse).

The continuing treaty process is a bilateral process which, by Section 35, can define or expand the treaty rights that are recognized and affirmed by the Constitution of Canada.

#### THE BILATERAL PROCESS

The present bilateral system lacks a representative of the Crown who has the authority to negotiate, review or "renovate" treaties on behalf of the government of Canada. The appointment of Mr. Oberle to represent the Crown in the renovation of Treaty 8 is a clear recognition, by both Treaty First Nations and the Crown, of the need for such a Crown representative. it would be appropriate for the Constitution to provide for the office of a Crown representative, with the authority of a treaty commissioner.



1100 - First Avenue Esst, Prince Albert, Seek. \$6V 2A7

# Federation of Saskatchewan Indian Nations

Right Honourable Brian Mulroney
BOLL OF COMPLES
COMPLE

Dear Mr. Milroney:

Was Wedgestion of Saskatchesen Indian Mations:

Please be advised that the above Indian Treaty First Nations wish to return that treaties were entered directly between representatives of the Crown, now in right of Canada, and their First Nations, and that relationship must remain as the priority of our respective dealings. All treaties between the Crown and First Nations are bilateral. New treaties, advantages to old treaties or "renovation" agreements restating the spirit and terms of treaties, all come within the protection of Section 35 of the Constitution Act, 1982, including the bilateral process under which those acresments will be reached.

We request that a clear statement be made by this First Ministers'
Conference of the primacy of the treaty relations for our Indian First
Nations; and that a mechanism through the bilateral process be explicitly
confirmed as a vehicle for the discussions and agreements to adhesions to
treaties or "renovation" agreements restating the spirit and terms of
t eaties.

Recognizing that the multilateral process you envisage for the establishment of self-government, could affect our interests, we make the following suggestions:

- 1. It must be clear that it is only in addition to the existing bilateral process. We see the bilateral process as the priority for our treaty Indian First Nations;
- 2. It must recognize the inherent right of the First Nations to self-government;

 The process must be a constitutional process and not by legislation or delegation.

Please find enclosed supporting documents to the above, which documents include:

- 1. The Constitutional Position of the Prairie Treaty Nations Alliance (the Federation of Saskatchewan Indian Nations' position thereof), April 1, 1985;
- 2. The Federation of Saskatchewan Indian Nations' revision to the Proposed 1985 Constitutional Accord Relating to the Aboriginal Peoples of Canada, April 1, 1985;
- 3. Background Paper on "Section 132 of the BNA Act, and the Bilateral Process."

In summary, the treaty Indian First Nations of Saskatchewan are desireous of maintaining and enhancing their treaties in accordance to the process established by their forefathers.

Yours Truly,

Chief Solown Sandarson

/Encls.

88/lm.

## THE CONSTITUTIONAL POSITION

OF THE

PRAIRIE TREATY NATIONS ALLIANCE
(Federation of Saskatchewan Indian Nations portion)

#### I. GENERAL PRINCIPLES

The Indian First Nations of the Prairie Treaty
Nations Alliance have joined together to restate, clearly and
forcefully, the nature of our relationship with the Crown and
the Government of Canada.

The First Nations, as independent sovereigns, had the power and ability to enter into treaties with other nations. International law describes the relationship between nations as a relationship of sovereign equality. This principle applies when the nations are equal in strength and when nations vary greatly in size or power. The fact that our populations were small did not alter the need, in international law, for our relationship with the Crown to be established on the basis of free consent.

The law established by the Crown to regulate their dealings with the First Nations recognized the need for consent and treaties. These principles underly the Royal Proclamation of 1763, the Constitution Act, 1867, the Rupert's Land and North-Western Territory Order, and various other parts of Canadian law down to the restatement of certain of these principles by the Supreme Court of Canada in November, 1984, in the decision in Guerin v. The Queen. While in other parts of Canada the relationship of First

Nations to Canada may be defined in terms of aboriginal rights or land claims settlements, the relationship of the First Nations of the Prairie Treaty Nations Alliance is rooted in the treaties negotiated between our leaders and the representatives of the Crown.

The treaties confirmed a continuing relationship of political equality between the First Nations and the Crown. We did not give up any rights of self-government by the sharing arrangements in the treaties. The First Nations retained their right of self-determination. That right has been recognized in the International Covenant on Civil and Political Rights, signed by Canada in 1976. Our right of self-determination includes the sovereign power to determine our own citizenship without interference from any Canada laws. The sharing arrangements gave rise to a continuing special relationship between the Crown and Government of Canada and the First Nations. The special relationship involved a fiduciary obligation on the part of Canada, which involves not only the proper management of Indian assets, but a responsibility as the stronger power, to respect the principle of political equality to protect and enhance the rights of the First Nations to self-government and self-determination. The obligation is of the highest order. It is with the Crown in the right of Canada represented by the federal government. It cannot be delegated to any other level of government. The relationship was to be a positive one for both the First Nations and the Government of Canada. Instead it became a relationship of repression and dependence. Our task continues to be the re-establishment of the original treaty relationship. The relationship must be properly understood and defined so that our First Nations and Canada can prosper as partners today and for generations to come.

#### II. CONTENTS OF THE TREATIES

#### 1. INTRODUCTION

The Prairie Treaty Nations Alliance (PTNA) represents those peoples who are the beneficiaries to the treaties entered into between their Nations and the Crown now in right of Canada. Primarily located in the prairies, and the northeastern portion of British Columbia, the peoples represented by the PTNA are beneficiaries mainly to those treaties known as the "numbered" treaties. They entered into

those treaties in the latter 18th century after the American Revolutionary War with adhesions signed up to the 1970's. Beneficiaries of the Jay Treaty and the Dakota Treaties of Alliance with the British Crown are also represented by the PTNA.

Prior to the coming of the white man to the Americas, Indian Nations recognized the sovereignty of one another by forming compact, treaties, trade agreements and military alliances. They understood that it was necessary to enter into arrangements with other nations, tribes or bands in order to survive cooperatively and to live in an orderly and organized manner. Treaties were, therefore, standard mode of relations.

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Treaty No. 8, covering the northwestern corners of Saskatchewan, northern Alberta, and northeastern British Columbia was signed by the Cree and Dene Nations in 1899 with adhesions signed in 1900;

Treaty No. 10, covering a large portion of northern Saskatchewan and signed by the Cree and Dene Nations in 1906 and 1907.

The distribution of powers as evidenced by treaties was done consensually. It becomes important, then, to understand each sides motivation as to the terms of the treaties. The point to remember, however, is that all of the powers were once held by the bands as Nations, not the Canadian or any other Government. Whatever powers the federal government may exercise over Indian Nations it received from the bands, not the other way around. What then did Indians give to the Canadian Government, and what did they retain for themselves? The understanding of Indian people must be inferred from speeches recorded at the treaty councils or through oral history. Furthermore, positions have to be understood in the context of specific Indian cultures, and the conditions of the day such as policies and political matters all of which affected the terms which were not properly recorded. Such variables are the evidence by which we can understand the treaty terms.

By the written terms of the treaties, the Commissioners acting on behalf of the Crown agreed to the

# Indian Nations retaining the following:

- (1) To reserve or set aside for the sole and exclusive use of the respective Bands or Tribes plots of land to be allocated in the manner prescribed in the respective agreements.
- (2) That the lands so reserved would only be sold, leased or otherwise disposed of by the Crown for the use and benefit of the respective Indian Bands or Tribes, with their consent thereto first had and obtained.
- (30 To provide medicine chests and maintain schools for the Indian inhabitants of the reserves, and assistance in economic development.
- (4) That the Bands or Tribes should have hunting, fishing, trapping rights over the lands referred to in the Treaties.

During the preliminary negotiations and in order to induce the Indian nations to execute the treaties, the Commissioners agreed orally that the Indians could also retain the following powers, and which powers are part of the treaties:

(1) Their tribal autonomy would be respected and they would suffer no direct or indirect compulsion to alter their traditional ways of life. The Commissioner explained that what was offered to them would not take away from their way of life as you will have it in the future as you have it now as what I offer is additional to what you already have, thus, implying that the sovereignty of the Indian Nations would continue.

- (2) They would continue to enjoy the unrestricted rights to hunt, fish, trap and gather over their traditional lands (whether ceded or not), to the exclusion of non-Indians.
- (3) They would continue to enjoy all rights in respect of their traditional lands.
- (4) They would be provided with prompt and adequate relief in times of famine, and proper medical care, and those who were aged or infirm would receive all necessary attention.
- (5) They would not be conscripted into military service nor taxed, which implies they are allies rather than subjects.

### 3. PRESENTATIONS TO THE FIRST MINISTERS' CONFERENCES

The sacredness and importance of treaties was recently confirmed by the various submissions of the different treaty Indian Nations at the 1983 and 1984 First Ministers, Conferences which are now quoted:

(1) "The treaties are of utmost importance to Indian people because they guarantee our way of life, and help to preserve our traditional ways, and beliefs, and will enable future generations to follow and continue with the important teachings of our forefathers.

The Indian Nations of southern Alberta signed Treaty No. 7 at Blackfoot Crossing on September 22, 1877.

The Treaty recognized the special status of Indian People as the aboriginal habitants placed on this Great Island (North America) by the Great Spirit.

The Treaty established the terms of peace, law, order, and inter-governmental relationships between the signatory powers."

THE RIGHT TO BE INDIAN,
A STATEMENT ON THE CONSTITUTIONAL
ACT 1982 AND RECOMMENDATIONS BY THE
STONEY INDIAN NATION OF TREATY NO. 7
PRESENTED TO THE RIGHT HONOURABLE
P.E. TRUDEAU, PRIME MINISTER OF
CANADA, ASSEMBLY OF FIRST NATIONS

(2) "It is the position of the Blood Tribe that they have fulfilled their part of the treaty agreement with Canada, namely; to share their land subject to a reservation. However, Canada has had a dismal record in carrying out its part of the agreement. Canada puts a very limited and restrictive interpretation on its part of the agreement, which is a cause for some of the strained relationship between the Indian peoples and Canada. It is the position of the Blood Tribe that treaties whether categorized as legal or not, are nevertheless binding on both parties."

THE CONSTITUTIONAL POSITION ON THE BLOOD TRIBE, ASSEMBLY OF FIRST NATIONS

(3) The Peigan Tribe tabled their declaration on treaties, which among other things, asserts that an inquiry and clarification process is now necessary. (4) "The First Nations who signed treaties believed they had entered into a Sacred Covenant with the Crown. Such treaties, form our Indian perspective, were viewed as mutually-acceptable "living arrangements", and enabled both parties to respect each others differences, and to live in harmony with this beautiful land. The Treaties established a basis for harmonious relations between our peoples.

However, an increasing divergence from the original intent of the treaties, both those which are written and those which are oral, has resulted in a steady deterioration in the well-being of Indian people, and in Federal relations with the First Nations generally. During the past century, the original treaty guarantees have been submerged under federal and provincial statutes, regulations, programs and policies. Some of these were specifically designed to smother and assimilate our people. We cannot allow this termination process to continue."

STATEMENT OF SPIRIT AND INTENT OF TREATIES IN SUPPORT OF THE ASSEMBLY OF FIRST NATIONS, PRESENTED BY CHIEF JOHN SNOW, ASSEMBLY OF FIRST NATIONS.

(5) The presentation of the Indian Nations of Hobbema to the S.37(1) conference on Aboriginal and Treaty Rights, March 15-16, 1983, in reference to the right of selfdetermination states,

"It has been established by long historical practice, and has been recognized by treaty. For example, Treaty \$6, signed in 1876 with the Plain and Wood Cree

### Indians provides:

They (the Indians) promise and engage that they will in all respects obey and abide by the law, and they will maintain peace and good order between each other, and also between themselves and other tribes of Indians.

and Treaty \$7 signed in 1877 with the Blackfoot of Bow River and Fort MacLeod provides:

They will maintain peace and good order between each other and between themselves and other tribes of Indians, and between themselves and others of Her Majesty's subjects, whether Indians, Half Breeds or Whites, now inhabiting or hereafter to inhabit, any part of the said ceded tract. The direction in the above treaties to maintain peace and order was a general mandate in treaties which acknowleged (as did many of the instruments establishing British colonial self-government) the right of the Indian people to preserve public order and govern themselves. It is not too much to say that such a right has executive, legislative and judicial dimensions. While we remain an original people within the Canadian Confederation, we also make and administer our own laws, and resort to our own dispute-resolving processess in with the treaties and traditional accordance practices."

PRESENTATION OF THE INDIAN NATIONS OF HOBBEMA TO THE S.37 (1) CONFERENCE ON ABORIGINAL AND TREATY RIGHTS. ASSEMBLY OF FIRST NATIONS.

(6) The Federation of Saskatchewan Indian Nations through their representative Chief Sol Sanderson stated at the 1983 First Ministers' Conference that the treaties are the foundation of our relations with Canada. By the treaties our nations retained their powers over their peoples and lands including their legislative, adjudicative, and executive powers and institutions thereof. Pursuant to the treaties, the Indian Nations have agreed to co-exist peacefully with Canada, which treaties must be reviewed to clearly establish the rules and regulations of our co-existence and sharing of the land.

### III. THE ELEMENTS OF A CROWN-TREATY FIRST NATIONS PROCESS

#### THE TREATIES

Treaties were entered into directly between representatives of the Corwn and of the First Nations. Each side recognized the power of the other to enter into formal, binding treaties as independent powers. The treaties established a relationship with obligations on each side. As in any other treaty situation, the Indian First Nations and the Crown, by agreement can modify or expand the terms of the treaty relationship. New treaties, adhesions to old treaties or "renovation" agreements restating the spirit and terms of treaties, all come within the protection of Section 35 of the Constitution Act, 1982. All treaties between the Crown and First Nations are bilateral, involving the federal government alone representing the Crown. Governments of provinces were not involved in the treaties in western Canada (even where treaties and adhesions were signed after provincial governments had been established). Though Ontario signed Treaty Nine, the courts have ruled that the province had no power or authority to deal with the issues of First Nations rights. Only the federal government was capable of such actions (R v Batisse).

The continuing treaty process is a bilateral process which, by Section 35, can define or expand the treaty rights that are recognized and affirmed by the Constitution of Canada.

### THE BILATERAL PROCESS

The present bilateral system lacks a representative of the Crown who has the authority to negotiate, review or "renovate" treaties on behalf of the government of Canada. The appointment of Mr. Oberle to represent the Crown in the renovation of Treaty 8 is a clear recognition, by both Treaty First Nations and the Crown, of the need for such a Crown representative. it would be appropriate for the Constitution to provide for the office of a Crown representative, with the authority of a treaty commissioner.



March 26, 1985

The portions of the Accord highlighted in square brackets relate to the constitutional amendment proposal.

# WORKING DRAFT FOR DISCUSSION PURPOSES ONLY

PROPOSED 1985 CONSTITUTIONAL ACCORD
RELATING TO THE ABORIGINAL PEOPLES OF CANADA

WHEREAS the aboriginal peoples of Canada, being descendents of the first inhabitants of Canada, are unique peoples in Canadian society enjoying the rights that flow from their status as aboriginal peoples, from treaties and from land claims agreements, as well as rights flowing from Canadian citizenship, and it is fitting that

(/a/) there be protection of their rights in the the federal draft Constitution of Canada,

Reasons

(b) removed nd new Whereas clause added

(/b/) they have the freedom to live in accordance with their own cultural and/religious heritage and to use and maintain their distinct languages;

AND WHEREAS the aboriginal peoples were historically self-governing and assert a continuing inherent right of self-government,

AND WHEREAS, pursuant to section 37.1 of the /Constitution Act, 1982/, a constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces was held on April 2 and 3, 1985, to which representatives of the aboriginal peoples of Canada and elected representatives of the governments of the Yukon Territory and the Northwest Territories were invited;

AND WHEREAS it was agreed by the government of Canada and the provincial governments, with the support of representatives of the aboriginal peoples of Canada and elected representatives of the governments of the Yukon Territory and the Northwest Territories, that

- (/a/) the Constitution of Canada should be amended to recognize and affirm the rights of the aboriginal peoples of Canada to self-government within the Canadian federation,
- (/b/) governments and aboriginal peoples would benefit from a greater degree of federal-provincial cooperation with respect to matters affecting the aboriginal peoples of Canada, including programs and services provided to them,
- (/c/) governments and the aboriginal peoples of Canada would benefit from better statistical information relating to the circumstances of aboriginal peoples, which could be achieved most efficiently by use of information provided by the proposed 1986 Census of Canada, and
- (/d/) direction should be provided for the continuing discussions leading up to the second constitutional conference required by section 37.1 of the /Constitution Act, 1982/;

NOW THEREFORE the government of Canada and the provincial governments hereby agree as follows:

### PART I

#### SELF-GOVERNMENT AND EQUALITY RIGHTS

- 1. The Prime Minister of Canada will lay or cause to be laid before the Senate and House of Commons, and the first ministers of the provinces will lay or cause to be laid before their legislative assemblies, prior to December 31, 1985, a resolution in the form set out in the schedule to authorize an amendment to the Constitution of Canada to be made by proclamation issued by Her Excellency the Governor General under the Great Seal of Canada.
- 2. The process of negotiations referred to in the proposed paragraph 35.01(2)(/a/) of the /Constitution Act, 1982/ set out in clause 2 of the schedule shall have regard to the following factors:

- (/a/) that agreements relating to self-government for aboriginal peoples may encompass a variety of arrangements based on the particular needs and circumstances of those peoples, including ethnic-based governments, public government, modifications to existing governmental structures to accommodate the unique needs of the aboriginal peoples and management of, and involvement in, the delivery of programs and services:
- (/b/) the existence of a currently identifiable land base for the aboriginal peoples concerned;
- (/c/) existing aboriginal and treaty rights, or other rights and freedoms, of the aboriginal peoples concerned;
- (/d/) the rights and freedoms of the non-aboriginal people in the communities or regions where the aboriginal groups live; and
- (/e/) any relationship between the matters being negotiated and land claims agreements under negotiation with the aboriginal peoples concerned.
- 3. The negotiations referred to in article 2 of this Accord may address any appropriate matter relating to self-government including, among other matters,
- (/a/) the identification of the aboriginal peoples concerned:
  - (/b/) the nature and powers of aboriginal self-government;
- (/c/) responsibilities of, and programs and services to be provided by, aboriginal governments;
- (/d/) the definition of the geographic areas over which the aboriginal governments will have jurisdiction;
- (/e/) resources to which the aboriginal governments will have access;
- (/f/) fiscal arrangements and other basis of economic support for aboriginal self-government; and
  - (/g/) distinct rights for the aboriginal peoples.

- 4. The objectives of agreements negotiated pursuant to the proposed paragraph 35.01(2)(/a/) of the /Constitution Act, 1983/) set out in clause 2 of the schedule shall be
- (/a/) to recognize increased control and responsibility by aboriginal peoples of lands that they own or that have been or may be reserved or set aside for their use;
- (/b/) to ensure increased participation of the aboriginal peoples of Canada in government decision-making that directly affects them;
- (/c/) to maintain and enhance the distinct culture, religious, and heritage of the aboriginal peoples of Canada; and
- (/d/) to recognize the unique needs of the aboriginal peoples of Canada in Canadian society.
- 5. During the period between the date this Accord is signed and the date the constitutional amendment set out in the schedule comes into force, the government of Canada and the provincial governments, in consultation with representatives of aboriginal peoples, shall take such measures as are necessary to initiate the negotiations contemplated by that amendment.
- 6. Periodic reports on the progress of negotiations contemplated by the constitutional amendment set out in the schedule shall be made to the ministerial meetings referred to in article 13 of this Accord.

### PART II

# FEDERAL-PROVINCIAL COOPERATION ON MATTERS AFFECTING THE ABORIGINAL PROPLES OF CANADA

- 7. The government of Canada and the provincial governments are committed to improving the socio-economic conditions of the aboriginal peoples of Canada and to coordinating federal and provincial programs and services for them.
- 8. In order to achieve the objectives set out in article 7 of this Accord, the government of Canada and the provincial governments shall enter into regular discussions, on a bilateral or multilateral basis as appropriate, which shall

have the following additional objectives:

- (/a/) the determination of the respective roles and responsibilities of the government of Canada and the provincial governments toward the aboriginal peoples of Canada;
- (/b/) the improvement of federal-provincial cooperation with respect to the provision of programs and services, as well as other government initiatives, to the aboriginal peoples of Canada so as to maximize their effectiveness; and
- (/c/) the transfer to aboriginal self-government for the aboriginal peoples of Canada, where appropriate, of responsibility for the design and administration of government programs and services.

### PART III

# STATISTICAL DATA RESPECTING THE ABORIGINAL PEOPLES OF CANADA

- 9. It is recognized that the government of Canada and the provincial governments are in need of improved data relating to the socio-economic situation of the aboriginal peoples of Canada, including the numbers and geographic concentrations of those peoples, so as to facilitate the structuring of governmental initiatives to better meet this social, economic and cultural needs.
- 10. In order to obtain data referred to in article 9 of this Accord, the government of Canada and the provincial governments, with the participation of representatives of the aboriginal peoples of Canada and elected representatives of the governments of the Yukon Territory and the Northwest Territories, shall forthwith enter into discussions aimed at developing a proposal for use of the 1986 Census of Canada, or information taken therefrom, in order to achieve this objective.
- 11. The proposal referred to in article 10 of this Accord shall include recommendations for cost-sharing with respect to the implementation of measures to obtain data that are to be taken in addition to measures taken within the existing structure of the 1986 Census of Canada.

### PART IV

### PREPARATIONS FOR CONSTITUTIONAL CONFERENCE

- 12. In preparation for the second constitutional conference required by section 37.1 of the /Constitution Act,1982/, the government of Canada and the provincial governments shall, with the participation of representatives of the aboriginal peoples of Canada and elected representatives of the governments of the Tukon Territory and the Northwest Territories, conduct such meetings as are necessary to deal with the items included in the agenda of the constitutional conference held on March 15 and 16, 1983 and listed in the 1983 Constitutional Accord on Aboriginal Rights and to deal with the constitutional proposals of the representatives of the aboriginal peoples of Canada.
- 13. Ministerial meetings, composed of designated ministers of the government of Canada and the provincial governments, representatives of the aboriginal peoples of Canada and elected representatives of the governments of the Yukon Territory and the Northwest Territories, under the chairmanship of a designated minister of the government of Canada, shall be convened at least twice in the twelve month period immediately following the date this Accord is signed, and at least twice in the period between the end of that twelve month period and the date on which the second constitutional conference required by section 37.1 of the /Constitution Act, 1982/ is held.
- 14. The ministerial meetings referred to in article 13 of this Accord shall
- (/a/) issue directions as to work to be undertaken by technical or other working groups and review and assess that work on a periodic basis;
- (/b/) seek to reach agreement or consensus on issues to be laid before first ministers at the second constitutional conference required by section 37.1 of the /Constitution Act, 1982/; and

(/c/) receive periodic reports, in accordance with article 6 of this Accord, on the progress of negotiations refered to in that article.

### PART V

### · GENERAL

- 15. Nothing in this Accord is intended to preclude, or substitute for, any bilateral or other discussions or agreements between governments and the various aboriginal peoples of Canada and, in particular, having regard to the eathority of Parliament under Class 24 of section 91 of the /Constitution Act, 1867/, and to the special relationship that has existed and continues to exist between the Parliament and government of Canada and the peoples referred to in that Class, this Accord is made without predjudice to any bilateral process that has been or may be established between the government of Canada and those peoples.
- 16. Nothing in this Accord shall be construed so as to affect the interpretation of the Constitution of Canada.

### RESOLUTION

Motion for a Resolution to authorize an amendment to the Constitution of Canada

WHEREAS the /Constitution Act, 1982/ provides that an amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by resolutions of the Senate and House of Commons and resolutions of the legislative assemblies as provided for in section 38 thereof;

NOW THEREFORE the (Senate) (Ecuse of Commons) (legislative assembly) resolves that an amendment to the Constitution of Canada be authorized to be made by proclamation issued by Her Excellency the Governor General under the Great Seal of Canada in accordance with the schedule hereto.

### AMENDMENT TO THE CONSTITUTION OF CANADA

### Possible Equality Rights Amendment

1. The /Constitution Act, 1982/ is amended by adding thereto, immediately after section 35 thereof, the following sections:

### Rights to self-government

15.01 (1) The rights of the aboriginal peoples of Canada to self-government, within the context of the Canadian federation, are hereby recognized and affirmed.

# Commitment relating to negotiations for self-government

- 2. The government of Canada and the provincial governments are committed, to the extent that each has jurisdiction, to
- (/s/) participating in negotiations directed toward concluding acressments relating to self-government with representatives of abortional peoples living in particular communities or regions, which peoples have expressed their desire to enter into those agreements; and
- (/b/) discussing with representatives of aboriginal pacples from each province and from the Yukon Territory and the magnitudest Territories the timing, nature and scope of the negotiations referred to in paragraph (/a/).

# Participation of territories

(3) The government of the Yukon Territory or the Northwest Territories is entitled to perticipate as a party in perspectations or agreements referred to in perspectations or agreements relate to communities or regions within the Yukon Territory or the Northwest Territories, as the case may be.

### Rights to self-government defined

- 35.02 The rights of the aboriginal peoples of Canada to self-government may for the purposes of subsection 35.01(1), be defined in agreements concluded pursuant to paragraph 35.01(2)(/a/) with representatives of aboriginal peoples living in particular communities or regions that include a declaration to the effect that subsection 35.01(1) applies to those rights.
- 2. Section 61 of the said Act is repealed and the following substituted therefor:

### References

- 61. A reference to the /Constitution Act, 1982/, or a reference to the /Constitution Acts, 1867 to 1982/, shall be deemed to conclude a reference to any amendments thereto.
- 3. This Amendment may be cited as the /Constitution Amendment/, year of proclamation /(Aboriginal peoples of Canada)/.

TO PRESERVE THE INTEGRITY OF BILATERAL PROCESSES, THE PRAIRIE TREATY NATIONS ALLIANCE SUGGEST THE FOLLOWING AMENDMENTS TO THE FEDERAL PROPOSAL:

- 1. The addition of the words "to the extent that each has authority" after the reference to "Canada and the provincial governments" in:
  - (a) paragraph (a) (ii) of the third whereas clause;
  - (b) paragraph 5 of Part I;
  - (c) paragraph 1 of Schedule II.
- 2. The addition of the words "whether or not in relation to matters mentioned in this Accord" at the end of paragraph 11.
- 3. The addition of the words "or specified through bilateral agreements" after the reference to Section 35.02 in the proposed Section 35.01(1).





# Federation of Saskatchewan Indian Nations

March 15, 1985

TO: Chiefs of Saskatchevan

FROM: Chief Sol Sanderson

RE: Section 132 of the BNA Act and the Bilateral Process

# I. Section 132 of the Constitution Act, 1867

Section 132 of the <u>Constitution Act</u> 1867 (formerly the BNA ACT) lends support to the position of the Indian Nations who have concluded Treaty with the the Crown and who today choose to exercise their relationship through the bilateral process. Section 132 reads:

132. The Parliament and Government of Canda shall have all powers necessary or proper for performing the obligations of Canada or of any Province thereof, as part of the British Empire, towards foreign countries, arising under Treaties between the Empire and such foreign countries.

Section 132 raises the question: Can the Indian Nations properly be regarded as a "foreign country" within the meaning of the Section. The usual use of the term relates to countries whose laws and territory are entirely separate from that of Canada.

Two facts are consistent with the position that Section 132 is appropriate to the situation of the Indian Nations of Canada:

- 1. The Indian nations possess inherent sovereignty to govern themselves and their territories in keeping with Indian law and in keeping with the spirit and intent of the treaties; this inherent sovereignty has been recognized and confirmed through Canadian Constitutional law and common law; and
- 2. The relationship of the Indian Nations to Canada is seen by the Indian Nations as part of their External or Foreign Affairs.

## II. Recognition of Inherent Sovereignty of the Indian Nations

There can be no dispute that the Indian Nations occupied and controlled this wast territory of Canada before the coming of the Europeans. Nor can there be any dispute that the Indian Nations were sovereign in the fullest sense of the word, deriving power from the Indian people to govern their territory, the people of the Nation, and exercising a full measure or control over foreign affairs.

Nor is there dispute that today the Indian Nations continue in their claim to sovereignty and their exercise of Indian Governments. The Declaration of the Assembly of First Nations and the Accord of the First Nations are the most recent formal expression of this fact.

In the Crown's dealing with the Indian Nations, the inherent sovereignty of the Indian Nations has been recognized consistently until the turn of the Century and to a lesser degree since that date. The following events trace this recognition.

## (a) Political and Legislative Recognition of Inherent Sovereignty

# 1. The Royal Charters, (including the Charter of the Hudson's Bay Company 1670):

The terms of the Charters recognize the autonomous status of the Indian people, as well as their ownership of lands. The Hudson's Bay Company Charter, for example, by its terms recognized that the fur trade depended upon the continuing presence of the Indian Nations. The Company was authorized to make peace or war with "any Prince or People whatsoever that are not Christians" in places where the company was established and also to "right and recompence themselves upon the Goodes estates or people of those partes" from whom any loss or injury had been sustained. Thus, in the early years the Hudson's Bay Company did conclude Treaties with the Indian Nations who traditionally used lands required by the Hudson's Bay Company for outpost or settlement.

# 2. The Royal Instructions:

Long before the passage of the Royal Proclamation of 1763, the British Crown instructed its officers in Canada to approach the Indian Nations with a view to gradually making them British subjects while at the same time, recognizing their inherent sovereignty. An example of this strategy is reflected in the instructions sent to the Governor of Nova Scotia after the signing of the Treaty of Utrecht in 1713. The instructions remained the same until the turn of the century:

\*... and whereas we have judged it highly necessary for our service that you should cultivate and maintain a friendship and good correspondence with the Indian inhabiting within our said Province of Nova Scotia, that they may be induced by degrees not only to be good neighbors to our subjects but likewise themselves to become good subjects to us; we do therefore direct you upon your arrival in Nova Scotia to sand for the several heads of the said Indian Nations or Clans and promise them friendship and protection in his Majesty's part, you will likewise bestow upon them in our name as your discretion shall direct such presents as you shall carry from bence for their use."

## 3. The Seven Years War:

The Indian Nations freely chose alliance to the British or to the French Crown throughout the period of hostilities between those two countries. The Indian Nations continued to regard themselves throughout this period as sovereign nations. Although the Micmacs were allies of the King of France, they had never recognized his sovereignty. When the French informed the Micmac Nation that they were not mentioned in the Treaty of Utrecht, 1713, they stated that they considered themselves an independent people and not the subjects of British. In fact, the Micmacs continued to regard themselves as allies of the French and hostilities began between the British and the Indian Nations. It was to end these hostilities that in 1725 a Treaty was tigned in Boston headed "The Submission and Agreement of the delegates". By this document the Indian delegates:

\*... acknowledge Ris said Majesty King Georges' jurisdiction and dominion over the territories of the said Province of Rova Scotia or Acadia, and make our submission to Ris said Majesty in as amiable a manner as we have formerly done to the most Christian King..." (ie the French King)

Indian delegates also promised that their peoples should not molest any of His Majestys' subjects "In their settlements already made or lawfully to be made". If any Indians committed robbery or outrage, the Tribe or Tribes to which they belonged would make satisfaction to the injured parties. In case of any dispute or injury between British subjects and Indians, application would be made for redress according to His Majesty's laws.

Apart from providing evidence as to the coasensual mature of the relationship between the Indian Nations and the Crown, the Maritime Treaty of 1725 and its successors were significant insofar as they demonstrated that the Indians were to be dealt with as an organized body of people, with their own leaders and with their own distinctive internal systems of government. This is further demonstrated in the Article providing that each tribe was to be collectively responsible for damages. By contrast, the British Government in its dealing with the Acadians, the original French inhabitants of the country, sought submission to the Crown on an individual basis. The clause stipulating that his Majesty's laws shall govern disputes between the settlers and the Indians clearly recognized the existance of conflict arising from the presence of several distinctive legal systems within the territory. By necessary implication, disputes between and within Indian Nations were to be dealt with by Indian law.

### 4. The Indian Wars:

After the Seven Years War, in 1760 the Indian Nations turned to the British to remove themselves from outposts which the Indian Nations had agreed could be established in Indian territory to wage war against the French. When the British refused to remove themselves from the outposts, the major Indian War was fought. By 1763 seven of the ten British outposts had been destroyed. News of the successful Pontiac rebellion was reported to the London Chronicle on July 16, 1763. The British Crown was forced to make lasting peace with the Indian Nations. Even before the success of the Indian Wars, the British Crown had been advised by its representatives responsible for diplomatic negotiations with the Indian Nations, Sir William Johnson as early as 1798 that the Indian Alliance could only be assured by incorporating Indian Policy into:

"a solumn public Treaty to agree upon clear and fixed boundaries between our Settlements and their hunting grounds so that each party may know their own and be a mutual Protection to each other of their respective possessions."

# 5. The Royal Proclamation 1763:

The Royal Proclamation of 1763 expressly recognized the sovereignty of the Indian Nations. The Recital to Part 4 of the Proclamation states:

..../5

"Whereas it is just and reasonable and essential to Our interest and the Security of Our Colonies that the several Nations or Tribes or Indians, with whom we are connected and who live under our Protection should not be molested or disturbed in the possession of the Parts of Our Dominions and Territories as, not having been caded to or purchased by us, are reserved to them, as their Hunting Grounds."

By its terms the Proclamation created an Indian territory and assured that the Indian Nations remain secure in the possession of their territory, until through a process of consent, on clear terms, the Indian Nations in assembly surrendered their land to the Crown. Although Rupert's Land was not included in the territory described as "Indian Country" the "general provisions respecting title and sovereignty were to apply to all Nations "with whom we are connected and who live under our Protection."

### 6. Tresties:

Consistent with the Royal Proclamation, over 80 Treaties were concluded between the various Indian Nations and the Crown. Although the terms of the Treaties vary, all Treaties recognized the sovereignty of the Indian Nations to conclude the consensual compacts upon which the Indian Nations and the Crown were to co-exist forever.

The sovereignty of the Indian Nations was to be limited according to the express terms of the Treaty. Crown representations at the time of treaty made this clear. As example, the Anishinabek Nation was addressed in the Kings name by Lord Simcoe, the Governor of Upper Canada, June 22, 1763. He told the Chiefs:

#### "Children and Brothers:

These authentic papers will prove that no King of Great Britain ever claimed absolute power or sovereignty over any of your lands or territories that were not fairly sold or bestowed by your ancestors at public treaty. They will prove that your natural dependency has ever been preserved by your predecessors and will establish that the rights resulting from such independency have reciprocally and constantly scknowledged in the Treaties between the Kings of France formally possessors of parts of this continent and the Crown of Great Britain."

# 7. Pre Confederation Constitutional Acts, The Quebet Act, (1771), Constitution Act (1791) and The Union Act (1840): The:

Every pre-Confederation Constitutional Act enacted by Britain for Canada, contained provisions which saved the operation of the Royal Proclamation while at the same time consolidated the jurisdiction of the local governments over lands covered by Treaty. The saving clauses are Section 3 of the Quebec Act; Section 33 of the Constitution Act and Section 46 of the Union Act.

## 8. The BNA Act 1867 and the Rupert's Land Transfer

Between 1863 and 1871, the British Government enacted BNA Acts for Canada, certain terms of which expressly recognized the aboriginal rights and title and the sovereignty of the Indian Nations occupying the territory known as Rupert's Land. These provisions are as follows:

### a) Section 109 of the BNA Act 1867

The Provinces would receive their lands, mines, minerals, royalties subject to existing trusts and aboriginal title, which was expressly recognized as a burden on the title of the province.

# b) Section 91(24) of the BRA Act 1867

The administration of Crown obligations to Indians and lands reserved for Indians was placed with the federal government and therefore beyond the jurisdiction of the provinces.

# c) Section 146 of the BNA Act 1867

Rupert's land was to be admitted into Canada, subject to the terms of Addresses from the Houses of the Parliament of Canada and the Legislative Assemblies the British North America Act, and the provisions of any Order-in-Council enacted by the British Parliament.

# d) The Rupert's Land Transfer

# (1) The 1867 Address passed by Canada

The Canadian Government enacted that upon the transference of the territories to the Canadian Government, the claims of the Indian tribes to compensation for lands required for purposes of settlement would be considered and settled in conformity

..../7

with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines.

## (11) The 1869 Address

This Address provided that upon the transference of the territories in question to the Canadian Government it will be the duty of the Covernment to make adequate provision for the the protection of the Indian tribes whose interest and well being are involved in the transfer and the Governor in Council was suthorized to arrange any details that may be necessary to carry out the terms and conditions of the above agreement. The procedure for complying with this condition was set out in Clause 8 as follows:

5. "It is understood that any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government and that the Company shall be relieved of all responsibility in respect of them."

## (iii) 1870 Order-in-Council, passed by the Britain

Rupert's Land was admitted into Canada on the following condition.

14. "Any claims of Indians to compensation for lands required for the purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government; and the company shall be relieved of all responsibility in respect of them."

The constitutional status of the terms and conditions were considered by Mr. Justice Morrow in B. Paulette et al and the Registrar of Titles (#2) (1973) 42 D.L.R. (3d) 8 (N.W.T.S.C.). In reference to the undertaking to settle Indian claims contained in the 1867 and 1869 Addresses Mr. Justice Morrow observed:

"It would seem to me from the above that the assurances made by the Canadian Government to pay compensation and the recognization of Indian claims thereto did by virtue of section 146 above, become part of the Canadian Constitution and could not be removed or altered except by Imperial Statute. To the extent, therefore, that the

above assurances represent a recognition of Indian title or aboriginal rights, it may be that the Indians living within that part of Canada covered by the proposed caveat may have a constitutional guarantee that no other Canadian Indians have.

## 9. Indian Acts

From the passage of the first Indian Act to the present day, jurisdiction has been protected under the Indian Act for the Indian Governments to exercise a measure of self-government. Further, jurisdiction has been defined under the Act which recognized the special relationship of Indian Nations to a way of life different from non-Indian citizens of Canada.

### 10. The Canada Act 1982:

Sections of the Canada Act 1982 reflects a recognition of the right of the Indian Nations. Although the scope of that recognition has yet to be defined, certain preliminary observations favour the position that the Canada Act itself entrenches a limited sovereignty to Canada, conditional upon Canada ensuring that the rights and freedoms of the Indian Nations shall be protected by the Crown. This was the result of the debate in Westminster on the Canada Act.

At the time of the passage of the bill, the Indian Nations raised strong objection that Canada was claiming its power to amend the constitution from Britain at the expense of the obligations which the Crown has to the Indian Nations. After strenuous debate in the House of Commons, the House of Lords, and the offices of the Governments of Canada and Britain, certain questions were directed to Canada by Britain, at the highest level, seeking assurances that the patriation of Constitution would not jeopardize the Crown obligations to the Indian Nations. Such assurances were given. Indeed, over 100 M.P.'s and Lords tabled the following resolution which appeared subsequently on the Order Paper:

That this House places on record its deep and enduring respect for the Indian Nations of Canada, their history, spiritual beliefs and practices, languages, social and economic systems and forms of government; expresses the gratitude of the British peoples for the welcome and assistance given by the Indian people from the times of early settlement to the present day; for their cooperation and help in our trading relations and in our policy of

co-existance in their homelands and for their generous and courageous support in two world wars when so many of their young men volunteered to defend the British Crown, thereby demonstrating their loyalty and willingness to sacrifice their lives: and expresses its hope that their rights, institutions and culture will be fully respected following the passing into law of the Canada Bill."

The view that Canada's sovereignty was conditional was expressed by Lord Denning in the Alberta case. The Indian Nations of Alberta sought a declaration seeking to prevent the patriation of the Constitution until the British Crown recognized obligations it had to the Indian Nations. Although refusing such a delaration, Lord Denning considered the Canada Act as follows:

"It seems to me that the Canada Bill itself does all that can be done to protect the rights and freedoms of the aboriginal peoples of Canada. It entrenches them as part of the Constitution so that they cannot be diminished or reduced except by the prescribed procedure and by the prescribed majorities. In addition, it provides for a conference at the highest level held so as to settle exactly what their rights are. This is important, for they are very ill-defined at the moment.

There is nothing, so far as I can see, to warrant any distrust by the Indians of the Government of Canada. But, in case there should be, the discussion in this case will strengthen their hand so as to enable them to withstand any onslaught. They will be able to say that their rights and freedoms have been guaranteed to them by the Crown - originally by the Crown in respect of the United Kingdom - now by the Crown in respect of Canada - but, in any case, by the Crown. No Parliament should do anything to lessen the worth of these guarantees. They should be honoured by the Crown in respect of Canada so long as the sun rises and the rivers flows. That promise must never be broken.

Thus, the jurisdiction of Canada under the Canada Act remains burdened with overriding obligations to insure that the Indian Nations are protected by the Crown in keeping with Crown obligations.

In addition to this limitation on Canada's sovereignty, the sovereignty of the Indian Nations may enjoy expression in Sections 25, of the Canada Act, 1982. It is the Indian view, and also the view of many writers and legal historians that the inherent sovereignty of the Indian Nations was recognized and confirmed in the Royal Proclamation and the Treaties. Sections 25 and 35 protects existing aboriginal and treaty rights. Thus and to the degree that the Royal Proclamation and the Treaties confirm sovereignty, it is protected through provisions of the Canada Act. Finally Section 91(24) binds the Crown to legal trust obligations, as decided in the Musquess case which bind the Federal Covernment to protect Indian land in the Indian's best interest. As will be discussed later in this paper, those trust obligations ensure that the Federal Covernment must assist the Native to attain full independence.

# 11. The Universal Declaration of Human Rights and the Declaration Regarding non Self-Governing Territories

Canada is a signatory to the United Nations covenants which stand solidly for the principles of self determination and decolonization of colonies:

### Declaration Regarding Non Self-Coverning Territories

### Article 73

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well being of the inhabitants of these territories, and to this end:

- (a) to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;
- (b) to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the

partitular circumstances of each territory and its peoples and their varying stages of advancement;

- (t) to further international peace and security;
- (d) to promote constructive measures of development, to encourage research, and to co-operate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and acticatific purposes set forth in this article; and
- (e) to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature, relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

THE INTERNATIONAL COVERANTS ON HUMAN RIGHTS AND OPTIONAL PROTOCOL

International Covenant on Economic, Social and Cultural Rights

### Article I

- 1. All peoples have the right of self-determination by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
- 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual banefit, and international law. In no case may a people be deprived of its own means of subsistence.

J. The States Parties to the present Covenant; including those have responsibility for the administration of Nor-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

It remains to be advanced internationally that the Indian Nations are nations, entitled to Canada's protection in achieving self-determination.

## (b) Judicial Recognition of Inherent Sovereignty:

## 1. The existence of Tribal Sovereignty

It must be remembered that the Canadian Courts and the British Courts have authority to interpret the laws as they have been enacted through the Parliament and Legislatures. In spite of this very narrow enquiry, the Courts of Britain and Canada have continued to express Opinion and Decision which recognizes the inherent sovereignty of the Indian Nations.

The issue of the continuing sovereignty of the Indian Nations after colonial settlement was expressly considered in the celebrated Privy Council decision of the Mohegan Indians v Connecticut, (1769) 5 Acts of the P.C. Colonial Series 218 when the Mohegan Tribe petitioned the Queen in Council alleging that the tribe had been deprived of certain tracts of land which had been reserved to them by Treaty with the Royal Colony of Connecticut. The first Royal Commission restored the land to the Indians. That report held that the status of the Mohegan tribe was a sovereign nation and was not subservient to the colonies. That question was appealed to the Privy Council. This presented the Privy Council with its first opportunity to determine the legal status of Indian Tribes within the British Empire.

The argument advanced by the colonist was that the Indians were subjects of Great Britain, and, as subjects, the Indian title must be determined by the laws of either Great Britain or the colonists. The Court of Commissioners rejected this argument. Commission Horfmanden writing for the majority of the Court of Commissioners on this issue in 1743 held that:

The Indians though living amonst the Kinds subjects in these countries, are a separate and distinct people from them, they are treated as such, they have a policy of their own, they make peace and war with any nation of Indians, when they think fit, without control from the English. It is apparent the Crown looks upon them not as

subjects, but as distinct peoples, for they are mentioned as week throughout Queen Anna's and Ris present Majesty's Commissions by which we now sit. And it is as plain, in my conception, that the Crown looks upon the Indiana as having the property of the soil of these countries; and that their lands are not, by Mis Majesty's Grant of particular limits of them for a colony, thereby impropriated in his subject till they have made fair and honest purchase of the native... so that from hence I at thre this consequence, that a matter of property in lands and dispute between the Indians as a distinct passia for no Act has been shown subjects, cannot be determined by the law of our land, but by a law equal to both parties which is the law of mature and mations, and upon this foundation, as I take, these Commissions have most property ensued.

Embodied in this decision and its subsequent confirmation is the explicit recognition of tribal sovereignty notwithstanding a Treaty agreement that brought the Indian Nations by consent under the protection of the Crown.

This was the view of Chief Justice Marshall expressed in a series of Judgments of the United States Supreme Court during the period 1810 to 1832. The Marshall decisions of this period have come to be regarded by the highest courts of Britain, Canada and other Commonwealth countries as the authorative decisions on the law of abortginal rights. In reaching his decisions Chief Justice Marshall engaged in an extensive analysis of British Indian and Imperial policy in North America. As such the judgments are applicable to the Indian Nations in Canada. Further, they have been referred to as the starting point for analysis by the highest courts in Canada, beginning with Mr. Justice Errong in the St. Catherines Milling and Lumber Co. v. The Queen.

U.S. (6 Pet.) the Court affirmed that the Indian Nations were recognized as having rights to self-government:

The Indian Nations have always been considered as distinct independent political communities retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial; with the single exception that imposed by irresistable power, which excluded them from intercourse with any other European potentate imposed on themselves as well as on the Indians. The very term 'mation' so generally applied to them, means 'a people distinct from others'....

The word 'treaty' and 'Estion' are words of our language, selected in our diplomatic and legislative proceedings, by ourselves, having a definite and well understood meaning. We have applied them to Indians, as we have applied them to the other nations of the earth. They are applied in the same sense...

Later, in the Judgement, the Chief Justice expressly ruled that the coming of the Indian Nations under the protection of the Crown does not reduce the Crown's recognition of their inherent sovereignty:

The settled doctrine of the law of Mations is that a weaker power does not surrender its independence - its right to self-government - by associating with a stronger and taking its protection. The weak state, in order to provide for its safety, may place itself under the protection of one more powerful without stripping itself of the right of government and ceasing to be a state. Examples of this kind are not wanting in Europe...at the present more than one state may be considered as holding its right of self-government under the guaranteed protection of one of more allies."

This concept of dependency was the subject of the commentary by Wheaton in his 1836 Treaties on the Law of Nations:

The sovereignty of a particular state is not impaired by its occasional obedience to the commands of other states, or even the habitual influence exercised by them upon its council. It is only when this obedience, or this influence, assumes the form of express compact, that the sovereignty of the state in theory and power, is legally effected by its connection with the other. Treaties of equal alliance, freely contracted between dependent states, do not impair their sovereignty. Treaties of unequal alliance, guarantee mediation and protection, may have the effect of limiting and qualifying their sovereignty according to the stipulations of treaties. (Wheston, Elements of International Law paragraphs 3 and 4, 1866).

Thus, defined, dependency is limited to the express and specific consent of the dependent nation. This definition is entirely in keeping with the international standard on self-determination of Nations.

In the most recent judgement, The Queen v. The Secretary of State for Foreign and Commonwealth Affairs, Lord Denning affirmed the sovereign power of the Indian Nations to enact laws governing Indian people:

"Indian peoples of Canada have been there from the beginning of time. So they are called the "aboriginal peoples". In the distant past there were many different tribes scattered across the vast territories of Canada. Zath tribe had its own tract of land, mountain, river or lake. They got their food by hunting and fishing: and their clothing by trapping for fur. So far as we know they did not till the land. They had their Chiefs and Resident to regulate their simple society and to enforce their customs. I say "to enforce their customs", because in early societies custom is the basis of law. Once a custom is established it gives rise to rights and obligations which the Chiefs and Readmen will enforce. These customary laws are not written down. They are handed down by tradition from one generation to another. Yet beyond doubt they are well established and have the force of law within the community.

In England we still have laws which are derived from custom from time immemorial. Such as rights of villagers to play on the green: or to graze their cattle on the common, see New Windsor Corporation v Mellor (1975) I Chancery 380. These rights belong to members of the community: and take priority over the ownership of the soil.

# 2. The Royal Proclamation of 1763

The Royal Proclamstion of 1763 is a landmark recognition of the inherent sovereignty of the Indian Nations. The Courts have held that the Proclamation has the force of statute in Canada and has never been repealed. Campbell v. Hall (1774) 1Cowp. 204, R. v. Lady McMaster (1926), Ex. C.R. 68.

The Courts have upheld that the Proclamation declares and confirms existing rights and is not a source of those rights. R. v. White and Bob (1964) 15 D.L.R. (2d) 613 (BCCA) per Norris at 6°0, 636; Calder v AGBC (1973) 34 D.L.R. (3d) 145 (S.C.C. per Ball p.204-5, per Judson 152, 156. R. v. Isaac (1975) 13 N.S.R. (2d) 460 (N.S.S.S. App. Div.) per Mackeigen at p.478.

As a law it is has endured the passage of time and governments, appearing in Section 25 of the Charter of Rights and Freedoms.

The Supreme Court of Canada, in St. Catherine Milling Co. Case, (Strong, J.) held that the Indian interest recognized by the Crown in the Royal Proclamation:

"could be divested or extinguished in no other manner than by cession made in the most solean manner to the Crown."

In The Queen v. The Secretary of State for Foreign and Commonwealth Affairs, January 28, 1982, Lord Denning confirmed that the Royal Proclamation continued to be a part of the constitution of Canada, to be read as an implied term of Section 91(24).

To my mind the Royal Proclamation of 1763 was equivalent to an entrenched provision in the Constitution of the colonies in North America. It was binding on the Crown so long as the sun rises and the river flows. I find myself in agreement with what was said a few years ago in the Supreme Court of Canada in the case of Calder v. Attorney-General of British Columbia (1973) 34 Dominion Law Reports (3d) 145, in a judgment which Mr. Justice Laskin concurred with Mr. Justice Hall, and said at page 203:

This proclamation was an Executive Order having the force and effect of an Act of Parliament and was described by Bwynne as the 'Indian Bill of Rights'. Its force as a statute is analgoous to the status of Magna Carta which has always been considered to be the law throughout the Empire. It was a law which followed the flag as England assumed jurisdiction over newly-discovered or acquired lands or territories...

"In respect of this Proclamation, it can be said that when other exploring nations were showing a ruthless disregard of native rights, England adopted a remarkably enlightened attitude towards the Indians of North America. The Proclamation must be regarded as a rundamental document upon which any just determination of original rights rests."

"... Save for that reference in section 91(24) the 1867 Act
was silent on Indian Affairs. Nothing was said about the
title to property in the "lands reserved for the
Indians", nor to the revenues therefrom, nor to the rights
and obligations of the Crown or the Indians thenceforward
in regard thereto. But I have no doubt that all concerned
regarded the Royal Proclamation of 1763 as still of
binding force. It was an unwritten provision which went
without saying. It was binding on the legislatures, the
Dominion and the Provinces just as if there had been
included in the Statute a sentence:

The aboriginal peoples of Canada shall continue to have all their rights and freedoms as recognized by the Royal Proclamation of 1763."

Thus the Royal Proclamation is part of the fundamental law of Canada and has defined relationships between the Indian Nations and the Crown spanning over 3 centuries. As mentioned, the inherent sovereignty of the Indian Nations has been explicity recognized in that instrument.

#### 3. Customary Law

The question of the application of Indian customary law has given the Courts an opportunity to lend support to the recognition of inherent sovereignty.

The question of the status of the Oneida Indians, one of the six Nations of the Iroquois, was discussed by Chancellor Kent in the New York case of Goodell v. Jackson (1823). 20 John G.R. 693 (N.Y. Ct. Err) at 709-10. The Iroquois Tribes, he noted, were originally free and independent Nations. It was contended that they had ceased to be a distinct people and become wholly incorporated with other Americans. However, stated Kent, he had been unable to discover evidence of this. "Do our laws", he asks,

"even at this day, allow these Indians to participate equally with us in our civil and political privileges?... Do we interfere with the disposition, or descent, or tenure of their property, as between themselves? Do we prove their wills, or grant letters of administration upon their intestate's estates? Do our Sunday laws, our school laws, our poor laws, our laws concerning infants and apprentices, or concerning idiots, lunatics, or habitual drunkards, apply to them?... Are they subject to our laws of marriage and divorce, and would we sustain a criminal

prosecution for bigamy, if they should change their wives or busbands, at their own pleasure, and according to their own customs, and contract new matrimonial alliances? I apprehend, that every one of these questions must be answered in the negative. They have always been, and are still considered by our laws as dependent tribes, governed by their own usages and Chiefs, but placed under our protection, and subject to our coercion, so far as the public safety required it, and no further.

This judgment is instructive of the danger which may befall the Indian Nations should they cooperate fully in obeying all the laws of Canada without preserving the jurisdiction of the Indians to live a distinct way of life.

The validity of a marriage contracted by two Indians of the Choctaw tribe according to tribal law and custom was considered by the Alabama Supreme Court in Wall v Williamson (1845). 8 Alabama R. 48 (Also S.C.) at 51-2 Goldthwaite J. said that the issue was whether at the time of the marriage the laws of the Choctaw tribe had been superceded, or whether they still compose a distinct community, governed by their own Chiefs and laws. It is not alleged, he observed, that any statute with this effect hd then been passed, so the question turned upon whether the Choctaws had lost their laws by the mere fact of living within the territorial limits of the United States. "It may be difficult", the judge concluded,

"to ascertain the precise period of time when one Nation or tribe, is swallowed up by another, or ceases to exist; but until then, there can not be said to be a merger. It is only by positive enactments, even in the case of conquered and subdued nations, that their laws are changed by the conqueror. The mere acquisition, whether by treaty or war, produces no such effect. It may therefore be considered, that the usuages and customs of the Croctaw tribe continued as their law, and governed their people, at the time when this marriage was had. The consequence is, that if valid by those customs, it is so recognized by our law."

Nations occupying territory within Mayers's Land After Consideration but before the Eupert's Land Transfer. In the case of Consolly v Woolrich (1867) 11 L.C.J. 187 (Quebec Supreme Court) the question involved the validity of a marriage concluded under Indian custom between a whitemean and a Candian Indian woman in a remote area of western Canada located within the scape of the Eupert's Land Charter. Justice Wonk held in the Superior Court that the portion of the common law prevailing in Rupert's Land had a very restricted application:

"It could be seminatered and enforced only smong and in favour of and against those 'who below to the company or were living trace than'. It did not apply to the Indians, nor were the Sative Laws or customs abolished or modified, and this is maquestionably true in regard to their civil right. It is easy to conceive, in the case of joint occupation of extensive countries by Europeaus and matrix actions of Tribes, that two different systems of civil and even criminal law may prevail. Mistory is full of such instances, and the Dominions of the British Crown exhibit cases of that kind. The Charter eid introduce the British law, but did not, at the same time, make it applicable generally or indiscriminately - it did not abrogate the ladien laws and usages."

These views were unanimously approved on appeal and have been adopted in a number of subsequent cases (see R. v. Man-e-quis-a ka (1869) 1 No. 2 N.W.T. 21 (N.W.T.S.C.) at 22-3 and Re Noah Estate (1961) 32 D.L.R. (2d) 185 (N.W.T. Terr. Crt.) at 200.

Because the Canadian Government has persisted in its efforts to assimilate the Indian Nations the argument whether the Indian Nations have been "swallowed up" into Canada will become more bitter in the future. No doubt Canada will rely on the fact that in 1960 the Indians were offered the vote. Canada will make reference to the taking of program dollars and the obedience of Indian Nations to Canadian laws. The Indian Nations must be ready to demonstrate the operation of Indian governments to clearly mark the line where Canad and her laws, language governments, history and religion ends and that of the Indian Nations begin.

# 4. The Trust responsibility under Section 91(24)

In a recent decision of the Supreme Court of Canada, Delbert Cuerin et al v. The Queen (The Musqueau Case) decision rendered November 1, 1984, the Supreme Court of Canada affirmed that the Federal Government remains burdened with fiduciary or trust responsibility to the Indian Nations.

The placing of a trust responsibility as a component of the Federal Government's jurisdiction under Section 91(24) recognized the inherent sovereignty of the Indian Nations. The trust responsibility has its roots in the debate on the nature of colonization itself. The trust has been called "the sacred trust of civilization" and although its clearest modern expression is found in the mandate sytem of the League of Nations and the Trusteeship sytem of the United Nations, the concept has its roots in much earlier times. The notion may be found in Victoria, who though unsure of any right in the Spanish authorities to assume administrative authority over the Indians, stated that if such administration were to be assumed it should be:

"for the welfare and in the interests of the Indians and not merely for the profit of the Spaniards" (De India, Section III).

The obligation to protect the property and status of the Indians is a theme which tracks through Britain's history as a colonial power. It was formally expressed in the Royal Proclamation, 1763.

Edmund Burke, in speaking to the Indian Bill of 1763 in the British House of Commons, stated that political power was being exercised ultimately for the benefit of the indigenous people and that the United Kingdom's position was in the strictest sense, a trust. (Lindley, op. cit., 330) Trust language was also used in the 1837 Select Committee Report of the House of Commons. In considering the measure to be adopted with regard to the original inhabitants of North America, the Committee stated that Great Britain held a trust:

"particularly belong and appropriate to the executive government as administered either in this country (Great Britain) or by the Governors of their respective colonies. This is not a trust which could conveniently be confided to the local legislature."

Statements were also made in the British House of Commons in 1865. (Alexandrowicz, The European-African Confrontation, p. 112). In regard to the British Colonial responsibility in Fiji, the United Kingdom took the position that their first duty was to protect native institutions and welfare. Further, the Berlin Conference held in 1884-85 is testimony to the agreement of the European powers, including the United Kingdom, to the sacred trust. The United Kingdom was placed under a legal duty to respect the principle of the sacred trust of Nations in Africa as a signatory to the Berlin Act, 1885, which provided that the colonial powers in Africa bound themselves to:

"watch over the preservation of the native tribes and to care for the improvement of the conditions of their moral and material well-being." (Article 6)

In 1931 the United Kingdom staed that it was the holder of a non-delegable trust to ensure the protection and advancement of the natives of Kenya (Lindley, op. cit., 335).

That the United Kingdom recognized it had a positive duty under customary international law (and therefore under the common law) involving legally binding obligations to the indigineous peoples of the colonies is clear. The mandate and trustee system created under the League of Nations and the United Nations formalized the customary rules. The clearest expression is in Article 22 of the Covenant of the League of Nations where it was said that in bringing the non-self governing colonies and territories under the Mandate System there would be applied:

"the principle that the well-being and development of such peoples form the sacred trust of civilization."

That this was not a newly created concept but the continuation of a principle applicable to the relations of the colonial power to indigenous peoples is accepted by eminent writers.

(Lindley, Op. cit, Ch. 36, Snow, The Question of Aborigines in the Law and Practice of Nations, (1919) Ch. VIII, Alexandrowicz, The European African Confrontatio. (1973) Ch. VIII.)

Likewise, the Supreme Court of Canada in the Musqueam case recognized that the trust has its root in the concept of aboriginal title itself. Insofar as the Crown asserted the right to acquire Indian title, it remained burdened with an obligation to protect the welfare and the territory of the Indians in and to their traditional territory.

In its controversial decision in the South West Africa Cases ((1966) I.C.J. Rep. 4), the International Court of Justice held that, "the principle of the sacred trust has as its sole juridical expression the mandate system" (pages 34-35). However, in the context of a judgment concerned with whether the obligations of the "sacred trust" could be enforced by third states, this statement has come in for strong criticism. In his dissenting judgment Judge Tomaka said that the idea of the sacred trust which:

"belongs to the moble obligation of conquering powers to treat indigenous peoples of conquered territories and to promote their well-being has axisted for many bundred years, at least since Vitoria." (page 265)

From the context it is clear that Judge Tomaka was not limiting the principle to area of conquest in a technical sense.

The position was also dealt with clearly by Judge Jesup in his dissenting judgment where he pointed out that the mandate was the legal mechanism to give effect to the principle of the sacred trust of civilization. He went on:

"The sacred trust is not only a moral ides, it also has legal character and significance; it is in fact a legal principle. This concept was incorporated into the tovenant after long and difficult negotiations between the parties over the settlement of the colonial issue."

The statement by the Court has come in for further criticism. Alexandrowicz has described it as "highly doubtful, if not untenable, in international law" ("The Juridical Expression of the Sacred Trust of Civilization," 65 Am. J. Int'l L. 149, 159 (1971)), and in view of the approach subsequently taken by the international Courts of Justice to the concept of the "sacred trust of civilization" the statement in the South West Africa Cases must either be taken to be incorrect or confined to the narrow procedual question of the enforceability by third parties of the sacred trust obligations.

The culmination of the development of the concept of the sacred trust of civilization is found in the Advisory Opinion of the International Court of Justice on the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970). (1971) 1.C.J. Rep 1. The Court, after reviewing more recent treaties and resolutions of the General Assembly of the United Nations, concluded:

"These developments leave little doubt that the ultimate objective of the sacred trust was the self-determination and independence of the peoples concerned."

Thus, it can be argued that the Federal Government has an obligation to ensure that the Indian Nations attain independence or otherwise exercise self-determination and this responsibility is inherent in the jurisdiction under Section 91(24). Thus, by definition, Section 91(24) recognizes inherent sovereignty.

Although the state is itself reflective of inherent sovereignty by placing the administration of it with the Federal Government another argument can be raised in favour of the bilateral process. For those Indian Mations in Ruperts Land, the argument is more compelling in light of the Ruperts Land Transfer which places a duty on the Dominion to care for the well-being of the Indian Nations with that territory, and on the Governor-in-Council to implement the Dominion's duty.

III. Aryoments used by the Colonial Courts to weaken the recognition of inherent sovereignty of the Indian Nations

#### 1. The Doctrine of Continuity

The Doctrine of Continuity is a very old and well applied doctrine in British Common law which has been used to define the rights of the indigenous peoples in lands where the British Crown has colonized. It states that in the case of a conquest or a cession, the rights of the original peoples, and their laws, will prevail, (should they be capable of definition by a colonial court), until the colonial government chooses to change those laws through an Act of its own Parliaments. The decisions already cited, Goodell v. Jackson, Wall v. Williamson, and Connelly v. Woolrich, are applications of this doctrine. The Doctrine was articulated in the leading case of Campbell v. Hall (1774) Lofit 655 where Lord Mansfield stated that the laws of a conquered country continue in force until altered by the conquerer.

TO DATE THE DECIDED CASES ARE BASED ON THE ASSUMPTION THAT THE INDIAN KATIONS HAVE BEEN CONQUERED. THERE HAS NEVER BEEN A CASE REGARDING THE INDIAN NATIONS OF CANADA WHICH HAS DECIDED THIS FACT ON EVIDENCE. THE EVIDENCE IS TO THE CONTRARY. THE INDIAN WARS WERE FOUGHT AGAINST THE BRITISH, AND THE INDIANS WERE VICTORIOUS. THE ROYAL PROCLAMATION OF 1763 REFLECTS THIS VICTORY. THIS ASSUMPTION MUST BE CHALLENGED POLITICALLY OR LEGALLY OR BOTH, AND THE QUESTION OF INHERENT SOVEREIGNTY WILL BE OPENED UP AND MADE VISIBLE IN THE PROCESS.

# 2. Indian Rights exist "At the good will of the Sovereign"

In 1868 the highest Court in Britain was asked to rule whether the Federal or Provincial Government assumed control over Indian territory following treaty. The case was called the St. Catherine Milling Case. In the course of judgement, the Court defined aboriginal title by interpreting the Royal Proclamation and Sections 91(24) and 109 of the BNA Act. The Royal Proclamation stated that the restriction on settlement into Indian country was to be "for the present or until our future pleasure be known". Evidence indicates that the phrase refers to a gradual and controlled pattern of settlement and not to the character of aboriginal title or Indian rights. Yet, IN THE ABSENCE OF EVIDENCE, and IN THE ABSENCE OF INDIAN REPRESENTATION, the court

interpreted the phrase to mean "Indian tenure under the Royal Proclamation was a personal and usufructary right dependent upon the good will of the sovereign." This decision has been applied by later courts and has been used by the government to justify the conclusion that the Doctrine of consent spelled out in the Royal Proclamation is limited by the power of the Crown to extinguish Indian rights through an ordinary act of parliament.

British and Canada have used this interpretation to their advantage in implementing constitutional change which expropriates Indian lands and rights without the consent of the Indian Nations. This was true in the implementation of the Terms of Union of British Columbia, the 1930 Transfer Agreements, and finally with the patriation of the Canada Act, 1982.

Under the Canada Act jurisdiction to govern Indian territory is placed entirely in the hands of the federal and provincial governments who have reserved to themselves the power to define aboriginal and treaty rights and to extinguish those rights without the consent of the Indian Nations.

Such an interpretation is contrary to the international covenants to which Canada is a signatory, namely:

- 1. The Universal Declaration of Human Rights;
- 2. The International Covenant of Economic, Social and Cultural Rights;
- 3. The International Covenant on the Elimination of all forms of racial discrimination;
- 4. The convention of the prevention and punishment of the crime of genocide;
- 5. The International Covenant on Civil and Political rights.

Further, such an interpretation is against the Royal Proclamation of 1763.

THERE IS NO QUESTION THAT AN INTERPRETATION WHICH PERMITS ANOTHER GOVERNMENT TO DEFINE AND EXTINGUISH THE RIGHTS OF THE INDIAN NATIONS OVER THEIR TERRITORY, OVER TREATIES, OR TO GOVERN INDIAN PEOPLE AGAINST THEIR WILL, IS CONTRARY TO THE ROYAL PROCLAMATION OF 1763 AND INTERNATIONAL COVENANTS AND IT IS OPEN TO CHALLENGE. THIS POINT IS MORE POWERFUL IN LIGHT OF THE FACT THAT THE DECISION IN ST. CATHERINES MILLING CASE WAS MADE WITHOUT INDIAN REPRESENTATION OR AGRUMENT. CERTAINLY IF SIX WORDS "OR UNTIL OUR FUTURE PLEASURE BE KNOWN" ARE TO BE INTERPRETED BY A COURT TO SUBJEGATE A NATION, THE INDIANS SHOULD AT LEAST BAVE THE BENEFIT OF LEADING EVIDENCE AND ARGUMENT ON POINT.

#### 3. Definition of the Treaties

The bovereighty of the Indian Nations to conclude treaties has been undersimed in a number of ways by a variety of judgments. The Canadian Courts have debated whether or not the Treaties give rise to bisding obligations of are "mere promises". Further, the decisions of Regime v. Sirves and Regime v. George ave subjugated the Treaty terms to an act of the federal Parliament, in the same way as the St. Catherines killing Case rendered aboriginal title "at the good will of the sovereign." Whether the discussion be with respect to treaties or aboriginal title, the rendering of those rights to a position where they may be aboraged without the consent of the Indians by another governments parliament is contrary to the principles of inherent sovereignty.

Lastly, in the Alberta case, the court ruled that the treaties were not international treaties:

... although the relevant agreements with the Indian peoples are known as 'treaties', they are not treaties in the same of public international law. They are not treaties between sovereign states, so that no question of state succession arises."

THIS CONCLUSION WAS ARRIVED AT IN THE ABSENSE OF CRUCIAL EVIDENCE TO DEMONSTRATE THE CONTRARY, AND MAY BE CHALLENGED ON THAT BASIS. THE POSITION OF THE INDIAN TREATIES UNDER INTERNATIONAL LAW REMAINS AN OPEN AVENUE FOR THE FUTURE. FURTHER, A CLARIFICATION OF THE TREATIES AGAINST THE CONSTITUTIONAL PROVISIONS ADMITTING RUPERTS LAND INTO CONFEDERATION REMAINS AN AVENUE OPEN ON THE POLITICAL AND LEGAL LEVELS. (See enclosed paper)

#### IV. Conclusion

# 1. The question of inherent sovereignty

The inherent sovereignty of the Indian Nations has been recognized time and again through the political acts taken by the Crown in relation to the Indian Nations, as reflected in the legislation, the constitution of Canada, and in the decided cases at common law. Notwithstanding this recognition, and especially as Canada gained strength, the colonial Courts have cooperated with the Canadian and British governments in their efforts to assimilate the Indian Nations and expropriate Indian territories. To this end, the recognition of inherent sovereignty has been seriously attacked and weakened through the decided cases. Questions may be raised concerning the legality of Canada and Britains' approach in this area. Those questions may be raised at international legal levels. At that level, the question is

whether or not the laws as they have been applied by the domestic Courts are in contravention of covenants which have been signed by Canada and Britain and against which those countries agree to be measured in their dealings the world over.

Even in its present state, the law as it has developed can be used to support the Crown's recognition of the inherent sovereignty of the Indian Nations; the Indian Nations have never doubted their sovereignty. Thus, the Indian Nations may rely upon section 132 of the BNA Act in their dealings with Canada, if they so choose.

2. In addition to the arguments of inherent sovereignty and Section 132 of the BNA Act, the Indian Nations are strengthened in their resolve to conclude formal relationships with Canada through the bilateral process with reference to the trust contained within the Section 91(24) jurisdiction. Special support is afforded to those Indian Wations whose territory falls within Rupert's Land, calling upon the words of the Rupert's Land Transfer and the duty imposed upon Canada and the Governor-in-Council to protect the well-being of the Indian Nations.

ract: Prepares by Louisa Mandell for the Indian Association of Alberta, October 13, 1983.

# CONSTITUTIONAL POSITION OF THE INDIAN NATIONS IN RUPERTS LAND: CLAIMS AND OFFICES

#### 1. Constitutional Position of the Indian Nations in Rupert's Land

Eupart's Land was the name given to the Territory granted to the Eudson's May Company by the British Crown in a Royal Charter of May 2nd, 1670. It ancompassed portions of the present day Quebec, Ontario, Manitoba, Saskatchewan and Alberta as well as the Eastern Northwest Territories. From 1670 until 1870, the Hudson's May Company carried on an exclusive trading monopoly within that area, and, from time to time, concluded treaties with those Indian Nations who traditionally possessed land which was required by the Company for permanent settlement or outposts.

Throughout this time, challenges were mounted by Indians and Metis as to the validity of the Hudson's Bay Company Charter and to the extent of the Companies authority. These issues remained unsettled in 1867 with the passage of the British North America Act, and with the sale of the Hudson's Bay Company territory to the British Crown. AN OUTSTANDING QUESTION TODAY IS THE RIGHT OF THE HUDSON'S BAY COMPANY TO SELL TREIR INTEREST TO THE BRITISH CROWN IN THE ABSENCE OF TREATY WITH THE INDIAN NATIONS.

Between 1763 and 1871, the British Government enacted a constitution for Canada, certain terms of which expressly recognized the aboriginal rights and title of the Indian Nations occupying the territory known as Rupert's Land. These provisions are as follows:

# a) The Royal Proclamation of 1763

Although Repert's Land was not included in the territory described in the Royal Proclamation as "Indian Country", the general provisions of the Royal Proclamation applied to Rupert's Land which stated that Indian title to the land was to be recognized and respected in the absence of a voluntary surrender of that title to the Crown.

# b) Section 109 of the BNA Act 1867

The Provinces would receive their lands, mines, minerals, royalties subject to aboriginal title, which was expressly recognized as a burden on the title of the Province.

# c) Section 91(24) of the BNA Act 1867

The administration of Crown obligations to Indians and lands reserved for Indians was placed with the federal government and therefore beyond the jurisdiction of the province.

#### d) Section 146 of the BNA Act 1867

#### (i) The 1867 Address passed by Canada

The Canadian Government enacted that upon the transferance of the territories to the Canadian Government, the claims of the Indian tribes to compensation for lands required for purposes of settlement would be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines.

#### (ii) The 1869 Address

This Address provided that upon the transference of the territories in question to the Canadian Government it will be the duty of the Government to make adequate provision for the protection of the Indian tribes whose interest and well being are involved in the transfer and the Governor in Council was suthorized to arrange any details that may be necessary to carry out the terms and conditions of the above agreement. The procedure for complying with this condition was set out in Clause 8 as follows:

8. "It is understood that any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communications with the Imperial Government and that the Company shall be relieved of all responsibility in respect of them."

# (111) 1870 Order-in-Council, passed by the Britain

Rupert's Land was admitted into Canada on the following condition:

14. "Any claims of Indians to compensation for lands required for the purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government; and the company shall be relieved of all responsibility in respect of them."

The constitutional status of the terms and conditions were considered by Mr. Justice Morrow in B. Paulette et al and the Registrar of Titles (#2) (1973) 42 D.L.R. (3d) 8 (N.W.T.S.C.). In reference to the undertaking to settle Indian claims contained in the 1867 and 1869 Addresses Mr. Justice Morrow observed:

"It would seem to me from the above that the assurances made by the Canadian Government to pay compensation and the recognisation of Indian claims thereto did by virtue of section 146 above, become part of the Canadian Constitution and could not be removed or altered except by Imperial Statute. To the extent, therefore, that the above assurances represent a recognition of Indian title or aboriginal rights, it may be that the Indians living within that part of Canada covered by the proposed caveat may have a constitutional gaurantee that no other Canadian Indians have."

#### SUMMARY

- 1. A legal question remains as to the authority of the Hudson Bay Co. to sell Reperts Land to the British Crown insofar as few treaties had been concluded with the Indian Nations.
- 2. As a matter of Canadian constitutional law the aboriginal title of Indians Nations in Ruperts Land to their territory has been expressly recognized and confirmed in the Royal Proclamation of 1763, Section 109 of the ENA act and the Ruperts Land Transfer which forms part of the Canadian Constitution through section 146.
- 3. As a matter of Canadian constitutional law the Canadian government is duty bound to settle the claims of the Indian Nations for land taken up by settlement, according to principle of fairness and in communication with the British Government. Further, the Canadian Government remains duty bound to make adequate provision for the protection of Indians with the Governor-in-Council empowered to carry out the Government's obligations over Ruperts Land.
- 4. Canada received the territory of Ruperts Land conditional upon Canada first legally acquiring the territory from the Indian Nations according to the terms of the constitution.

#### II. The Treaties

Following the admission of Ruperts Land into Confederation Canada embarked upon a treaty-making process as a method of fulfilling the conditions of the constitution. Today Canada argues that the aboriginal title of the Indian Nations to Ruperts Land has been extinguished by Treaty. The question to be answered by the Indian Wations of Ruperts Land is whether or not the obligations have been fulfilling through the treaty process as defined by the Canadian government.

Obligation #1: CANADA MUST RECOGNIZE ABORIGINAL TITLE TEROUGEOUT THE TERRITORY

This recognition is spelled out in the Royal Proclamation of 1763, Sections 109 and 146 of the British North American Act 1867 and the Rupert's Land Act 1870 as well as in the Dominion Land Act 1872. Canada maintains that the Treaties extinguish aboriginal title. Yet, at the time of treaty making, the Indian Nations were not advised that Canda was duty bound to recognize aboriginal title, nor did the Indian Nations know that the words "cede, release, surrender and yield up to the Government of the Dominion of Canada for Her Majesty the Queen and Her Successors forever all their right, title and privileges whatsoever to the lands included within the following unit..." would be included in the Treaty and would be interpreted by Canada to mean that Canada was acquiring the territory of the Indian Nations in exchange for certain promises. IT COULD BE ARGUED THAT THIS LACK OF DISCLOSURE ACCOUNTS TO A FAILED OBLIGATION ON THE PART OF CANADA.

Obligation 2: CANADA IS DUTY BOUND TO SETTLE THE CLAIMS OF THE INDIANS IN CONFORMITY WITH THE EQUITABLE PRINCIPLES WHICH HAVE UNIFORMLY GOVERNED THE BRITISH CROWN IN ITS DEALINGS WITH THE ABORIGINES.

The Royal Proclemation of 1763 spelled out the equitable principles which have governed the British Crowns dealings with the aborigines. The Proclemation set out that Indian lands were to be reserved for them until the Indian Nations agreed ON CLEAR TERMS to surrender their land to the Crown. One hundred years have passed and the Canadian Government continues to turn a deaf ear to five generations of Indians who have repeated the treaty terms as understood by the Indians. IT COULD BE ARGUED THAT THE FAILURE OF THE CANADIAN GOVERNMENT TO INTERPRET THE TREATIES ON THE TERMS UNDERSTOOD BY THE INDIAN NATIONS RUNS AGAINST THEIR OBLIGATION TO SETTLE IN CONFORMITY WITH EQUITABLE PRINCIPLES.

Further the Indian Nations must assess if the Treaty making process was fair. In fact the Indians were not on an equal footing with Canada, having been seriously weakened by the death of the buffalo, and by disease. The bargaining positions were weighed in favor of Canada who had independent legal counsel and who maintain control over the written document and the legal machinery to enforce the treaties as understood by Canada, at a time when the Indian Nations did not read nor understand the impact of the Indian Acts already in place at the time of Treaty making. AN ARGUMENT COULD BE ADVANCED THAT AS A RESULT, THE TREATY MAKING WAS UNFAIR AND NOT IN CONFORMITY WITH EQUITABLE PRINCIPLES.

#### Obligation 3: CANADA IS DUTY BOUND TO COMPENSATE FOR LANDS TAKEN UP FOR SETTLEMENT

Although Treaties #1 and #2 state that "it is the desire of Her Majesty to open up to settlement and immigration", Treaties #3 to #11

all go beyond that mandate. Treaty #3 stated that the purpose of negotiating the treaty was to open up the country "for settlement immigration and such other purposes as Eer Rajesty may see meet." Treaty #4 added "trade" to this list. Treaties #8 to #11 includes "travel, mining and lumbering." Strting with Treaty #3 the right of the Indians to hunt and fish throughout the surrendered land was guaranteed.

"Save and excepting such tracks as may from time to time be required or taken up for settlement, mining, lumbering or other purposes by her said Government of the Dominion of Canada or by any of the subjects thereof duly authorized by the said Government."

AN ARGUMENT MAY BE ADVANCED THAT THE TREATIES MAY NOT EXTEND TO THE TAKING OF LANDS FOR ANY PURPOSE OTHER THAN SETTLEMENT AND THE ASSUMPTION OF JURISDICTION BY THE GOVERNMENT OVER ANY OTHER LAND OR RESOURCES IS ILLEGAL AND BEYOND THE SCOPE OF THE CONSTITUTIONAL MANDATE.

# Obligation 4: CANADA MUST SETTLE THE TREATIES IN COMMUNICATION WITH THE IMPERIAL GOVERNMENT

To date the Treaties have neve been ratified. As a result the terms are not as yet properly nd clearly defined in Canadian Law. No doubt the Canadian Government hopes to argue at a later date that the definition of treaties reached through the section 37 constitutional process will correct this problem. IT COULD BE ARGUED THAT CANADAS PAILURE TO RATIFY THE TREATIES LEAVES THE MATTER UNSETTLED: AS A RESULT CANADA'S OBLIGATIONS REMAIN UNMET.

Further the numbered treaties were not concluded in communication with the Imperial Government. AN ARGUMENT EXISTS THAT INSOFAR AS THE TREATIES WERE NOT SO CONCLUDED, THE PROCEDURE FOR THEIR PROPER COMPLETION HAS NOT BEEN MET.

Obligation 5: CANADA REMAINS DUTY BOUND TO PROTECT THE INDIAN NATIONS AND THE GOVERNOR-IN-COUNCIL HAS BEEN AUTHORIZED TO ARRANGE FOR THEIR IMPLEMENTATION

The Indian Nations are the poorest people in Canada with an average poverty level 5 times the national average. AN ARGUMENT CAN BE MADE THAT CANADA HAS NOT PROTECTED THE INDIAN NATIONS AS REQUIRED.

#### III. Positions: Options

#### 1. The Indian Nations have full ownership of Rupert's Land

It could be argued that the Endson's Bay Company never had the authority to sell the land to the Imperial Crown. The territory is still the homeland of the Indian Nations who are the full owners of it. The Crown must conquer or treat with the Indian Nations before the Indian Nations will acknowledge any sovereign rights of the crown over them or the land.

#### 2. Ruperts Land remains fully burdened by Aboriginal Title

The Crown has not discharged its constitutional obligations to the Indians and may not fully claim Rupert's Land. The Treaties are not a settlement of claim, both because they have not been properly ratified but also because they were obtained through fraudulent misrepresentation. Under the circumstances the Indians Nations possess full title and rights to the land of Rupert's Land, as recognized in the Royal Proclamation of 1763, and sections 109 and 146 of the British North America Act and Rupert's Land transfer. Any claim of Canada to the land must be made after new negotiations with the Indian Nations.

# 3. The Treaties must be clarified and properly ratified on clear terms which carry the consent of the Indian Nations

The Indian Nations recognize that the Treaty making process was an attempt to settle the claims on Rupert's Land and from the Indians side, the spirit and intent of the Treaties are held sacred. However, before the Indian Nations agree that the constitutional obligations have been met the treaties must reflect the Indian understanding and must be entrenched into Canadian law to the extent that all Canadian law must be brought in line with Treaty terms, leaving the Indian Nations free to govern themselves and their territory within the framework of the treaty.

# 4. Canada must compensate the Indian Nations for lands and resources assumed by Canada which were not within Canada's mandate to under treatyassume.

Although the Canadian Government and the Provinces have wrongfully acquired Rupert's Land from the Indians, the claim can be resolved by way of compensation to be negotiated with the Indian Nations. The compensation could be based either on a cash award for past gains or alternatively on a resource sharing formula for the future, or both.

#### IV. Routes available to pursue position

#### 1. The Canadian Courts

A legal action could be taken by the Canadian Courts to have Canada's obligations under the Royal Proclamation of 1763, the BNA Act, sections 109, 91(24), 146, and the Rupert's Land transfer spelled out and interpreted.

#### 2. The Canadian Political System

Wegotiations may be pursued through the bilateral, section 37 or a separate other political process initiated with the Governor-in-Council.

#### 3. Implementing Indian Government

The Indian Nations may strengthen Indian institutions which will be mandated to implement the position of the Indian Nations on Rupert's Land.

#### 4. The United Nations

Although the sub-committees and working groups of the United Nations are available to the Indian Nations to advance the claim, at the present time the World Court will not receive a claim by the Indian Nations without the Indian Nations first proving that the Indians are nations within the meaning of international law. A nation is a People who share a common language, history, spiritual belief, laws and territory. The Indian Nations not only can prove their sovereignty within this definition but may also rely upon the Treaties as a recognition by the Crown of their Nationhood. Canada will block the case on the basis that the Indian Nations are minorities within Canada and it is only Canada who enjoys sovereign status.

Once inside the court, the Indian Nations could ask the Court to rule on Canada's role in the treaties, and whether Canada, in applying Canadian law has breached any covenants which has been signed by Canada. Canada has signed covenants protecting the rights of People to self-determination and against the expropriation of the territory of another Nation. A case could be mounted on this basis.

# 5. The European Court of Human Rights

A case could be explored against Britain for an interpretation of whether Britain has breached covenants as a result of her role in settling Empert's Land and in patriating the Canadian Constitution without the consent of the Indian Nations.

An argument could be mounted that Britain contributed to the expropriation of Indian territory in Eupert's Land by turning that land over to Canada and the Province against the interests of the Indian Nations and in violation of law and covenants.

#### MEHORANDUM

FROM: Louise Mandell

DATE: January 28, 1985

RE: Musqueam Case: The Issue of Sovereignty

The decision of the Musqueam case has assisted the Indian Nations in our arguments to advance on the questions of sovereignty and the issue of self-government. However, the case does not settle the law; although it establishes legal principles from which the sovereignty argument may be further advanced. This memo will explore the new areas of settled law together with the new approaches made available by virtue of the case.

#### A. Aboriginal Title

1. Aboriginal title is a right, not created by the Royal Proclamation of 1763 by the Indian Act or by any other executive or legislative provision but flows from original occuption. (page 24)

The statement ends a century of legal debate, started in the St. Catherines Milling Case, where the Privy Council stated that the Royal Proclamation of 1763 was the source of aboriginal title.

#### Argument on Sovereignty

Because aboriginal rights flows from original occupation and is not created by an Act of the Crown the Indian Nations may advance the argument that as a people with territory, they also have the rights to govern that territory in accordance with traditional law. The right to govern flows with the territory and is not created by an Act of the Crown.

# B. The description of aboriginal title

- 2. Aboriginal title is described as having the following legal properties:
  - a) It provides a legal right to occupy and possess certain lands, the ultimate title to which is in the Crown;
  - b) It is sui generis;
  - c) It is inalienable except to the Crown;
  - d) The Indian interest in the land gives rise upon surrender to a fiduciary obligation on part of the Crown to deal with the land for the benefit of the surrendering Indians.

#### Argument on sovereignty

By describing the interest as sui generis, (which means that the interest has its own unique description) the Court has rejected the old definition of usufructary right and left it open to the Indian Nations to raise a case on the evidence to create a definition of aboriginal title based upon specific facts and specific relationships.

Thus it remains to be described by future litigation what that unique interest may encompass. We do not know by this decision whether aboriginal title encompasses for example, timber, minerals, etc.; whether by virtue or aboriginal title an action may be sustained in trespass or nuisance; or, most important, to what extent sovereignty or Indian Government may or may not be aspect of aboriginal title. On the question of sovereignty, we are assisted by Mr. Justice Dixon's reliance upon the case of Johnson and MacIntosh. Quoting from Marshall C.J. the Indian Nation's sovereignty was thus described:

"In the establishment of these relations, the rights of the original inhabitants were, in no instance, entirely disregarded; but were necessary, to a considerable extent, impaired. They were admitted to by the rightful occupants of the soil with the legal as well as just claim to retain possession of it, and to use it according to their own discretion; but their rights to complete sovereignty as independent nations were necessarily diminished, and their power to dispose of this soil as their own will, to whomever they please, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it."

By this passage, the Court has acknowledged that the Indian Nations have a specific relationship as a Nation with the Crown. passage also acknowledges that Indian rights to their land could be used according to their own discretion. This allows for the application of Indian law without a doubt. Sovereignty was to be diminished to the extent that Indian Nations could dispose of the land only to the Crown. There is no other restriction on the sovereignty of the Indian Nations contained in this well known passage or in the Johnson and MacIntosh case. Thus there is room to pursue the issue of sovereignty, an issue which remains undecided in the face of the Musqueam case. However, the issue of sovereignty ties directly to the issue of extinguishment of title. There is insufficient sovereignty recognized to the Indian Nations by the Canadian Courts to ensure the survival of the Indian Nations if the final analysis provides that the Crown may extinguish aboriginal title by legislative act without Indian consent.

## C. The fiduciary relationship

3. The fiduciary or trust relationship between the Crown and the Indians has its roots in the concept of aboriginal title.

#### Argument on Sovereignty

The basis for this statement flows from the fact that with the assumption of sovereignty by the Crown, the Indian Nations, according to British law, were no longer in a position of selling their land to anyone other than the Crown. By virtue of this fact, the Crown assumed responsibilities to protect the Indian Nations in their possession of their territory and in their rights to surrender and to benefit from surrendered lands. There can be no question that the Crown recognized the Indian Nations as being a separate Nation, to be protected, and with whom treaties may be concluded.

#### D. The existance of the Trust

The <u>Musqueam</u> case clearly established legal responsibilities in the Federal Crown towards the Indian Nations called fiduciary or trust responsibilities. The circumstances within which a trust may arise are spelled out:

"Where by statute, agreement, or perhaps by unilateral undertaking one part has an obligation to act for the benefit of another, and that obligation carries with it a discretionary power, the party thus empowered becomes a fiduciary."

### Argument on Sovereignty

The Musqueam case is silent on how that trust may devolve or be terminated. The particularly form of legal trust recognized in the Musqueam case has its roots in the sacred trust of civilization which was first described by Vitoria in the 14th century. Though unsure of any right in the Spanish authorities to assume administrative authority over the Indians, Vitoria stated that if such administration were to be assumed it should be:

'For the welfare and in the interests of the Indians and not merely for the profit of the Spaniards.' (De India, Section 3)

The culmination of the development of the concept of the sacred trust of civilization is found in the advisory opinion of the International Court of Justice on the Legal Consequences for States of the Continued Presents of South Africa in Mobebla (South West Africa) Nothwithstanding Security Counsel Resolution 276 (1970) (1971) I.C.J. Rep 1. The Court, after reviewing more recent treaties and resolutions of the General Assembly of the United Nations concluded:

"These developments leave little doubt that the ultimate objective of the sacred trust was the self determination and independance of the peoples concern."

Thus, using the Musquess case the spring board for applying the international standards to the questions of devolution of the trust an argument may be made that the trust affirmed in the Musquess case may only be declared with the attainment of the self determination of the Indian Nations concerned. The Federal Government is directly responsible for the devolution. Each Indian Nation by this analysis would have to consent to the trust's final devolution.

Legal problems remaining on the question of sovereignty: The question of extinguishment of title

Prior to the Musqueam Case, the Courts have confirmed that the British Parliament, and the Federal Parliament have the power to abrogate, amend, reduce, or eliminate aboriginal title through legislation, without the consent of the Indian Nations. This point was conceded in the Calder case by Tom Berger who argued that although the Crown has the power to repeal the Royal Proclamation and aboriginal title, nevertheless the aboriginal title to the Nisgha territory had never been so extinguished. Three Judges of the Supreme Court ruled that aboriginal title had been extinguished by pre-Confederation land legislation passed by the colonial government of British Columbia which had the effect of assuming to the colony all the lands of the colony for the purposes of distributing those lands to the settlers. In the Sikyea case and George case it was held by the Supreme Court of Canada that treaty obligations could be similarly eliminated by an ordinary Act of the federal government.

It has been argued repeatedly that should such legislation have the effect of abrogating aboriginal or treaty rights, such legislation must be done expressly. This was the view expressed by Hall, in Calder. It has been recently affirmed in the Hare case, a fishing case from Ontario where Section 35 of the Charter was argued. The Doctrine of express repeal was expressly refused in the Baker Lake

The Indian Nations have always maintained that title may be extinguished only with the consent of the Indians.

Support for the Indians view regarding consent can be found in the language of Mr. Justice Dixon's judgment at page 19 and 20:

"The fiduciary relationship between the Crown and the Indians has its roots in the concept of aboriginal native Indian title. The fact that Indian Bands have a certain interest in lands does not, however, in itself give rise to a fiduciary relationship between the Indians and the Crown. The conclusion that the Crown is a fiduciary depends upon the future proposition that the Indian interest in the land is inalianable except upon surrender to the Crown.

An Indian Band is prohibited from directly transferring its interests to a third party. Any sale or lease of land can only be carried out after a surrender has taken place, with the crown then acting on the Band's behalf. The Crown first took this responsibility upon itself in the Royal Proclamation of 1763. It is still recognized in the surrender provisions of the Indian Act. The surrender requirement, and the responsibility it entails, are the source of the distinct fiduciary obligation owed by the Crown to the Indians. (Emphasis added)

However, in reciting the judgment of the Calder case, at page 21, Mr. Justice Dixon recited the majority holding in that case that aboriginal title existed in Canada (at least where it had not been extinguished by appropriate legislative action) independently of the Royal Proclamation. There was no attempt on the part of the Court in the Musqueam case to comment upon or distinguish that majority holding in Calder.

Further, in discussing the nature of Indian title, Mr. Justice Dixon characterized it by its "general inalienability". He did not say exactly how that land could be alienated, except that its alienability was to the Crown.

There is a general inconsistency with a responsibility vested in the Crown to protect aboriginal title under certain circumstances while permitting the same Crown the right to abrogate the title by of general Acts and without Indian consent. This point, however, must be measured against the degree to which the fiduciary responsibility burdens the Crown's activity with regard to unsurrendered land. This point too is unclear by the judgment. We do know that the fiduciary obligations has its roots in aboriginal title. We also know that:

"Where by statute, agreement, or perhaps by unilateral undertaking, one party has an obligation to act for the benefit of another, and that obligation carried with it a discretionary power, the party thus empowered becomes a fiduciary." (page 33)

These words suggest that a future case may develop full argument that the Crown holds fiduciary obligations with respect to all traditional territories. However, the narrow ruling of the case by no means goes this far but states that it is upon surrender, that fiduciary obligations arise.

In summary, although new language and argument has become available to us to argue the Indian position on the question of extinguishment, the question of extinguishment may not have changed as a result of the Musqueam case, except insofar as the issue of sovereignty and devolution of the trust are resolved in our favour, issues which will be discussed later in this memo.

6. The Canadian Constitution, Section 37 Conference Land Claims discussion, and the Musquean case

With respect to the Section 37 Conference, the Musquean Case points to a new area to advance the Indian arguments. Up until the decision in the Musquean case, the Department of Justice has argued within the context of the Section 37 discussions, within the context of land claims of discussions, and at the Court in Musquean, that the Indian Mations had no legal aboriginal title and that there was no legal trust vested in the federal government to the benefit of the

Indian Nations. The Supreme Court of Canada found that the Federal Government was wrong with respect to these two crucial issues. Thus there is room to push th governments at the Section 37 Conference, and during the land claims process, to force a renewed view of the question of aboriginal title in light of the affirmed title and trust.

The Indian Nations who have concluded treaty, and who wish to rely upon those treaties, may rest within the direct language of the Musquesm case which states that upon surrender direct fiduciary obligations arise to the benefit of the Band. Thus, all treaty obligations which arise in the Crown by virtue of the original surrender of land, must be exercised by the Federal Crown in keeping with the trust. This provides a sound basis to demand that the Federal Government take up the position of the Indian Nations, as trustee at the Constitutional Talks rather than permitting their previous stance which is one of an independent party at the constitutional table. As previously mentioned, those Nations whose relationship to the Crown is defined by aboriginal title may also take up this argument; although that argument would have to be carefully framed if the Musquesm case is to be used as the sole basis for advancing that position.

With respect to the question of aboriginal title, the Indian Nations may use the <u>Musqueam</u> to move the Province to recognize that some lands claimed exclusively by the Province are burdened by "unrecognized aboriginal title".

With respect to the trust, the Indian Nation could make ground on the question of self-government by discussing politically the devolution of the trust in keeping with the judgment of the World Court. The Federal Crown must devolve the trust or continue to remain burdened with expensive and on going obligations to the Indian Nations.

Because the trust obligations are binding on the Federal Crown in relation to "lands reserved for Indians" there is a strong political argument that in circumstances where aboriginal title imposes fiduciary duties on the Crown, and where there is a competing Federal interest, the Indian interest must be given priority. An example of this may be seen in the area of fishing rights. Where the Federal Crown has fiduciary duties to protect the Indian fishery, and where the National interests may be served, for example, by the construction of a railway, the construction of which would diminish Indian fishing rights, the cabinet must resolve that conflict in favour of the Indians. The extension of this argument can be made in all manner of activity. Should the Crown fail to so act, the Crown may be vulnerable to legal challenge.

Thus, Section 91(24) of the Constitution Act 1867 has been defined as including a fiduciary component which to that extent limits the sovereignty of Canada to enact laws and to carry on business within certain specific areas against the best interests of the Indian Nations. To this end, Canada's sovereignty can be described as conditional or limited by Canada's obligations to protect Crown obligations to the Indian Nations.

This constitutional arrangement continues to be determined within the context of the constitution itself wherein through the operation of the amending formula, the constitution can be amended without Indian consent. This problem may only be capably of remedy through political and international action.

#### DECLARATION

TO THE

PARLIAMENT OF CANADA

THROUGH THE PRIME MINISTER OF CANADA

· CONCERNING

FIRST MINISTERS CONFERENCE ON

CONSTITUTIONAL AND ABORIGINAL AFFAIRS

PRESENTED BY:

FIRST NATIONS SIGNATORY TO TREATY NO. ONE

FORT ALEXANDER
LONG PLAIN
PEGUIS
ROSEAU RIVER
SANDY BAY
SWAN LAKE



This Declaration is being presented by the Plains-Ojibway Treaty One Alliance on behalf of the Nations of peoples who are signatory to Treaty No. 1 of August 3, 1871.

Treaty No. 1 of August 3, 1871 was negotiated by the elected representatives of our Treaty Indian Nations with the Crown of Great Britain, heirs and successors. This Treaty signified that two sovereign nations entered into a legal binding International Bilateral Agreement with specific provisions and obligations of each party for establishing a mutual co-existence.

Treaty No. 1 of August 3, 1871 affirmed Indian Nations Sovereignty, Indian title to lands and resources and the inherent right of Indian Government.

Over the years there has been a gradual erosion of the Treaty No. 1 provisions wherein the Parliament of Canada has not fulfilled their legal and binding obligations..

In order to recapture the spirit and intent of Treaty No. 1 and negotiate the fulfillment of these obligations, our Treaty Indian Nations have organized in unity and established the Plains-Ojibway Treaty One Alliance.

The Plains-Ojibway Treaty One Alliance has a citizenry of 11,000 and is represented through six elected First Nations Governments namely:

First Nations Government of Fort Alexander First Nations Government of Peguis First Nations Government of Sandy Bay First Nations Government of Roseau River First Nations Government of Long Plain First Nations Government of Swan Lake

The Parliament of Canada has introduced a constitutional and legislative process to determine Aboriginal Rights. This process is referred to as the First Ministers Conference on Constitutional and Aboriginal Affairs. By its very name, it is a flagrant denial of the significance of the Treaties and the inherent rights contained therein. The First Ministers referred to, represent Provincial Governments who have no relationship with Treaty Indian Nations. It is a unilateral and multilateral negotiating forum with no relevancy to protecting the rights of our citizenry signatory to Treaty No. 1.

The Plains-Ojibway Treaty One Alliance rejects this multilateral constitutional and legislative process. The significance of Treaty No. 1 reinforces our right to enter into legal binding agreements on a Nation to Nation basis. Further, it reinforces our right to continue negotiating on a bilateral basis with the Parliament of Canada to fulfill the Crown's obligations and provisions defined in Treaty No. 1.

It is therefore incumbant upon the elected representatives of the Plains-Ojibway Treaty One Alliance to make a Declaration to the Prime Minister of Canada at the First Ministers Conference on Constitutional and Aboriginal Affairs.

- 1. We oppose the mandate of the First Ministers Conference to determine Aboriginal Rights in the Constitution of Canada.
- 2. We reject any unilateral or multilateral negotiating process in relation to the protection and promotion of Treaty One.
- 3. We reject any constitutional or legislative enactments imposed by a foreign government as it may relate to the Treaty and inherent rights of Treaty One people, such as Bill C-31.
- 4. We declare that no other organization in any way, shape or form speaks on behalf of the Plains-Ojibway Treaty One Alliance.
- 5. We will pursue a bilateral negotiating process with the Parliament of Canada for fulfillment of the provisions and obligations of the Crown defined in Treaty One.
- 6. We will introduce a process of Indian renewal to protect and promote the longevity of Treaty One as a legal and binding agreement for time immemorial.

7. We will maintain our Indian Governments with sole jurisdiction and autonomy over membership, lands, resources and the socio-economic development of Treaty Indian Nations.

The Parliament of Canada has no right to discuss the legal binding agreements and provisions therein, of the Treaty Indian people with the Provincial Government.

The Parliament of Canada has no right to categorize Treaty Indian people in a global term such as Aboriginal, which includes: non-status Indians, Inuits and Metis.

The Parliament of Canada has no right to perpetuate the process of assimilation and the Plains-Ojibway Treaty One Alliance rejects the intent and purpose of these Constitutional Conferences.

Further, we as Treaty One Indian Nations, serve notice to the Prime Minister of Canada that we will not treat in any multilateral forum.

In summation the First Nations of Treaty One will meet only with the Parliament of Canada on a Nation to Nation basis to negotiate the fulfillment of the provisions and obligations as defined in Treaty One of August 3, 1871.

FIRST NATIONS GOVERNMENT FIRST NATIONS GOVERNMENT OF PEGUIS Chief Raymond Beaulieu FIRST NATIONS GOVERNMENT OF SANDY BAY FIRST NATIONS GOVERNMENT OF ROSEAU RIVER FIRST NATIONS GOVERNMENT OF LONG PLAIN FIRST NATIONS GOVERNMENT

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BLOOD TRIBE FRESENTATION TO THE FIRST MINISTERS CONFERENCE APRIL 2-3, 1985 OTTAWA

The Blood Tribe has always existed as a nation. From time immemorial we have controlled our lands, encompassing thousands of square miles. We have controlled our religious, political, economic and cultural destiny.

We are caretakers of this land and of our rights, not for ourselves but for our children and generations into the future. This is a sacred trust given to us by the Creator. We have a duty to safeguard this trust against the immediate and perhaps short-sighted concerns of political factions and parties, and federal and provincial governments. The land is not ours to exploit; our aboriginal and treaty rights are not ours to negotiate and limit. They are for future generations and must be intact for them.

Our forebearers signed Treaty Seven, understanding that we would share our vast land in return for certain additional treaty rights. The land was not to be alienated from the Blood people. Specific areas were retained for Blood use from the greater area to be shared.

The term <u>inaistsi</u> has been in the Blackfoot language as long as we can remember. The term refers to a concept, and includes a number of assumptions. It is a sacred agreement. It is never broken in the lifetime of the parties. It is the highest form of agreement. It means a cessation of hostilities for the lifetimes of the participants.

Inaistsi concept was shared by other tribes long before
Treaty Seven was signed. Such an agreement encompassed the
highest order of commitment that is the essence of our Treaty.
We will try to explain this.

Indian nations. In the course of battle a point could tome when one party wished a cessation of hostilities. It must be stressed that there were no connotations of surrender, and inaists; was not always invoked by the losing party. To stop the battle one individual would use a designated song/cail, followed by waving a blanket. This procedure was commonly understood between tribes as a wish to engage in inaities, to come to this very serious and binding agreement. The parties then met and conducted ceremonies, and prayed with the pipe to solemnize the agreement. This agreement lasted for the lifetime of the participants. Inaists; was also invoked between feuding members of the Bloods, to effect reconciliation that would last during their lifetimes.

This concept, inaistsi, was invoked at the signing of Treaty Seven. When the treaty was interpreted to the Bloods it already contained phrases such as "as long as the sun shines". We understood this to indicate the Crown's willingnesss to engage in a matter as serious as inaistsi, and to have the agreement last in perpetuity. The phrases invoking times as long as the sun's life have practical significance when used in conjunction with inaistsi: the agreement was to last past the lifetime of the signators.

Blood participation in Treaty Seven was done on the basis on inaistsi: our expectations of the Treaty are on the basis of this solemn and binding undertaking in perpetuity. We note that the Bloods have fulfilled our part of the Treaty since signing: the government's record does not hold up as well.

We have stressed our Treaty and its meaning to relate to you its importance. We are attending this constitutional forum to set forth our position. We do not recognize the capacity of this conference or those who attend it, to negotiate, define or limit our rights without our direct participation and consent. We do not recognize the competence of provincial governments to participate in any constitutional undertaking concerning our rights. Even the draftors of the B.N.A. Act excluded the provincial governments from dealing with us: it was recognized that they held vested interests which could be contrary to our rights and best interests. This is still the case today. We do not appreciate having draft constitutional amendments circulated to all participants but the First Nations whom they most affect: that is hardly participation and consent on our part. Our participation at this conference is on the basis of our aboriginal and treaty rights, the importance of which we have just discussed.

Any discussion with the federal government concerning the identification and definition of our rights, and of constitutional amendment to stipulate and protect those rights, cannot be conducted by a limited series of constitutional conferences which must include the provincial governments.

Such a serious matter requires serious commitment from the concerned parties -- the Bloods and the federal government. It requires an on-going process with United Nations supervision, during which it is expected that the central government will become more familiar with Blood history and philosophy.

Only when you truly understand us as a people can there be some meaningful dialogue. The difference in your interpretation and our interpretation of Treaty Seven represents the type of unhappy misunderstanding which we have experienced up to the present.

Our full and meaningful participation is a requisite to any constitutional amendment. Any unilateral action by the government of Canada would be considered invalid by the Blood people. It would amount to political over-ride of our rights, and would destroy the Canadian Constitution for us.

The government of Canada has a dismal record with respect to dealing in good faith with aboriginal people. We are aware of the failure of the National Indian Brotherhood-Joint Committee; we remember the attempt at legislated assimilation in the White Paper of 1969. Leaks prior to the last constitutional conference revealing a strategy of 'embroiling' native people and provincial premiers during the proceedings to not increase our confidence in the conference and negotiation process.

Release of the draft of the proposed constitutional amendment to the provinces and selected advisors, though not to the First Nations, indicates a lack of respect by your government

and failure to recognize our paramount interests in this matter. Such tactics must stop or there will be no point in continuing these conferences.

Sections 25 and 35 of the Charter of Rights and Freedoms refer to our aboriginal and treaty rights. The Blood Tribe holds the view that aboriginal rights include all powers and rights accruing to a self-governing indigenous people.

Most important of these are the right to a land base and to self-government. Blood Tribe views the treaty rights as additional to and confirmatory of aboriginal rights, and sees the treaty modifying only one aboriginal right - the right to exclusive use of land. By treaty the Bloods agreed to share their land except for specifically reserved areas for exclusive Blood use. The Treaty also forged a unique relationship between the Bloods and the Crown. We note that citizenship and membership control are matters falling within our right to self-government, and we intend to exercise this right.

Any current legislative proposals directly affecting the future status of our rights must be susupended until those rights are entrenched in the Constitution; government policies, operational plans, legal opinions, conditions to contibution agreements and similar administrative actions must be suspended until the yet-to-be-decided negotiation process renders a mutual agreement on entrenchment of our rights. The Bloods must retain all services and programs while this process continues. Anything less amounts to economic blackmail.

The Bloods have a unique history and circumstances.

We reject any attempt to categorize us with other

aboriginal groups. They also have their own history and future,

and it is inappropriate to consider us as all the same.

Perhaps the semantic confusion resulting from the label

'Indian' has confused the Canadian government: be assured

that we are not all the same people.

Blood Tribe views Section 91(24) of the Constitution

Act 1867 as constitutional recognition of our bilateral relationship with the Crown. This simply gives the federal government the right to deal with First Nations, to the exclusion of the provinces. Clearly, any conflict between provincial and First Nation positions must be resolved by the federal government. We will not negotiate definition of our rights, of self-government, or of our participation in Canadian federalism with the provinces. We reject their participation in constitutional amendment concerning our rights.

We are here to present our position, and to establish a negotiation process for our place in federalism. This must include recognition of our aboriginal and treaty rights: as First Nations we are 'citizens plus'. Non-Indians in Canada are responsible for the actions of their forebearers, because they are living as they do now as a result of actions taken by previous governments. The Bloods are also in their present situation because of these earlier government actions. This historic opportunity to fairly resolve our constitutional issues offers you a chance to repair past wrongs, and to set

the stage for future peaceful, friendly relations between our two peoples.



## THE CONSTITUTIONAL POSITION OF TREATY EIGHT

The Honourable David Crombie has initiated a process of treaty renovation by agreeing to renovate, clarify and affirm the rights and freedoms recognized by Treaty No. 8. This initiative is a welcome and logical development of the treaty-making process of the Crown as historically exercised in bilateral negotiations and agreements with the First Nations.

Mr. Crombie is to be applauded for his imagination and his commitment to this historic endeavour. The renovation process, to be effective, must, however, receive Constitutional recognition.

First of all, there must be a constitutionally mandated mechanism for carrying out the renovation process by appointing and empowering necessary treaty commissioners.

Secondly, there must be a constitutionally guaranteed commitment on the part of the government of Canada to renovate the treaties at the election of the First Nations affected.

Thirdly, there must be constitutional guidelines for the interpretation of the treaties which will recognize and give effect to the traditional Indian understanding of them.

Finally, there must be a specific provision to recognize, affirm and guarantee treaty rights as they are clarified through the renovation process.

While it is the position of the First Nations of Treaty No. 8 that "renovated" rights are "existing" treaty rights, and that the government of Canada is under a legally enforceable fiduciary duty to give full effect to those rights, it is also their position that these matters should be explicitly set out in the Constitution.

The First Nations of Treaty No. 8 therefore suggest the following amendments to the Constitution Act, 1982:

A. S. 35(3) amended so as to read:

For greater certainty, in subsection (1), "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired, and includes rights which are or may be renewed, clarified or affirmed as the result of a process of treaty renovation.

(New wording is underlined)

- B. New provision added to Part II of the Constitution Act, 1982:
  - (1) The Governor General in Council shall appoint a treaty commissioner or commissioners who shall have the authority to represent the Crown and to negotiate new treaties or agreements with representatives of aboriginal peoples, and to renovate those treaties which are in existence.
  - (2) The government of Canada is committed to participating in negotiations with Indian First Nations, bands or tribes who are parties to, or are the successors of parties to treaties with the Crown, directed towards renovating those treaties and towards renewing, clarifying and affirming the rights and freedoms under them.
  - (3) The renovation negotiations described in subsection (2) shall take place at the election of the Indian First Nations, bands or tribes affected and shall have as their object the fulfillment of the true spirit and intent of the treaties, including and giving special weight to the traditional understanding of the Indian First Nations, bands or tribes as to the meaning of the treaties to which they are parties.
  - (4) The Treaty Rights Protection Office is hereby established with the function of monitoring and reviewing the fulfillment of all treaty rights and of investigating all allegations of non-fulfillment of such rights and of making determinations with respect to such allegations, including just compensation or redress, which determinations shall bind the Crown.



## PRIMIC MINISTER CREMISE MINISTRE

OTTAWA, KIA OA2 April 1, 1985

Dear Saul:

I have received your letters and Mr. Crombie has brought your concerns to me regarding your representation at the First Ministers' Conference.

Given the complexity of arrangements and preparations necessary for this conference, I regret that setting aside two seats for the Prairie Treaty Nations Alliance will not be possible. As you know, seats have been allocated for the Indians, the Metis, and the Inuit and for the constituency represented by the Native Council of Canada. I have every confidence that the seats which have been allocated to the Indian people and held by the Assembly of First Nations will be available to you so that your position and interests can be adequately represented.

I do appreciate the special relationship which the Treaty Indian people have with Canada, and I understand the value of bilateral discussions as a means of renewing that relationship. Mr. Crombie has already begun to deal with outstanding issues through a variety of initiatives which will develop a solid foundation for the future. Specifically, he has appointed Frank Oberle, M.P., to represent him in renovating Treaty 8, a process which I am watching with great interest.

Mr. Saul Sanderson
Prairie Treaty Nations Alliance
c/o Holiday Inn
Kent Street
Ottawa, Ontario

#### PRAIRIE TREATY NATIONS ALLIANCE

April 2, 1985.

Dear Mr. Prime Minister.

We have received your letter of April 1 regarding representation by the Prairie Treaty Nations Alliance at the First Ministers Conference.

While you consider our separate representation at the First Ministers Conference to be difficult to arrange at this point, we are pleased that you have confirmed the special relationship between Treaty First Nations and Canada. As you know, the Treaty First Nations of the P.T.N.A. value bilateral processes, such as the treaty renovation process recently initiated by your government and the First Nations of Treaty 8. The renovation initiative confirms that the treaty process continues to be available as a method for constitutional protection.

We welcome your agreement to meet with representatives of the Prairie Treaty Nations Alliance. We would like to organize that meeting as soon as reasonably possible. May we suggest a date within the next three months. We will contact your office to initiate arrangements.

In closing, we would like to commend the iniatives of Mr. Crombie in relation to Treaty 8 and the Prairie Treaty Nations Alliance. We look forward to a continuing productive relationship in the months and years ahead.

Yours sincerely,

Sol Sanderson, Chip.

Prairie Treaty Nations Alliance.

(Federation of Sochotelewan Indian Nations)

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Yours sincerely,

Sol Sanderson, Chief.

Prairie Treaty Nations Alliance.

(Federation of Sochatelemen Indian Matini)



DOCUMENT: 800-20/029

CA1 Z 2 -C. 52

FIRST MINISTERS' CONFERENCE
ON
ABORIGINAL CONSTITUTIONAL MATTERS



Proposed 1985 Constitutional Accord
Relating to the Aboriginal Peoples of Canada

Assembly of First Nations

OTTAWA, Ontario April 2 and 3, 1985



# AFN DRAFT 1 APRIL 1985

## PROPOSED 1985 CONSTITUTIONAL ACCORD

## RELATING TO THE ABORIGINAL PEOPLES OF CANADA

- WHEREAS the aboriginal peoples of Canada, being descendents of the First inhabitants of Canada, are unique peoples in Canadian society enjoying the rights that flow from their status as aboriginal peoples as well as from treaties and from land claims agreements, and it is fitting that
  - (a) there be elaboration of their rights in the constitution of Canada,
  - (b) they have the opportunity to exercise their full rights, as well as the opportunity to have self-government arrangements to meet their special rights, and
  - (c) they have the right to live in accordance with their own cultural heritages and to use and maintain their distinct languages;
- AND WHEREAS, pursuant to section 37.1 of the Constitution Act, 1982, a constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces was held on April 2 and 3, 1985, to which representatives of the aboriginal peoples of Canada and elected representatives of the governments of the Yukon Territory and the Northwest Territories were invited;
- AND WHEREAS it was agreed by the government of Canada and the provincial governments, with the support of representatives of the aboriginal peoples of Canada and elected representatives of the governments of the Yukon Territory and the Northwest Territories, that
  - (a) the Constitution of Canada should be amended to explicitly recognize and affirm the rights of the aboriginal peoples of Canada to self-government within Canada and to require the governments of Canada and of the provinces to negotiate agreements with the aboriginal peoples of Canada elaborating those rights;

- (b) the Constitution of Canada should be further amended to clarify the provisions relating to equality rights for aboriginal men and women,
- (c) governments and aboriginal peoples would benefit from a greater degree of federal-provincial cooperation with respect to matters affecting the aboriginal peoples of Canada,
- (d) direction should be provided for the continuing discussions leading up to the second constitutional conference required by section 37.1 of the Constitution Act, 1982;

NOW THEREFORE the government of Canada and the provincial governments hereby agree as follows:

## PART I

#### SELF-GOVERNMENT

- 1. The Prime Minister of Canada will lay or cause to be laid before the Senate and House of Commons, and the first ministers of the provinces will lay or cause to be laid before their legislative assemblies, prior to December 31, 1985, a resolution in the form set out in the schedule of authorize an amendment to the Constitution of Canada to be made by proclamation issued by Her Excellency the Governor General under the Great Seal of Canada.
- 2. The process of negotiations referred to in the proposed section 35.02 of the Constitution Act, 1982 set out in clause 1 of the schedule shall have regard to the following factors:
  - (a) that agreements relating to self-government for aboriginal peoples may encompass a variety of arrangements based on the particular rights, needs, and circumstances of those peoples, including ethnic-based government, public government, and modifications to existing governmental structures;
  - (b) the existence of a land base for the aboriginal peoples concerned;

- (c) existing aboriginal and treaty rights, or other rights and freedoms, of the aboriginal peoples concerned;
- (d) the rights and freedoms of the non-aboriginal persons in the communities and regions where the aboriginal peoples live; and
- (e) land claims agreements under negotiation.
- 3. The negotiations referred to in article 2 of this Accord may address any appropriate matter relating to self-government including, among other matters,
  - (a) citizenship of the aboriginal peoples concerned;
  - (b) the jurisdictional relationship among the institutions of aboriginal self-government and the institutions of the federal and provincial governments;
  - (c) the definition of the geographic areas over which the institutions of self-government will exercise jurisdiction;
  - (d) the ownership of land and resources within the traditional territories of the aboriginal peoples concerned;
  - (e) responsibilities of, and programs and services to be provided by, the institutions of self-government;
  - (f) fiscal arrangements and other bases of economic support for the institutions of self-government;
  - (g) distinct rights for the aboriginal peoples; and
  - (h) provisions regarding review and future amendments to the said agreements.
- 4. The objectives of the negotiations pursuant to section 35.02 of the Constitution Act, 1982 set out in clause I the schedule shall be to conclude agreements relating to the jurisdiction, land and resources of the aboriginal peoples of Canada.
- 5. During the period between the date this Accord is signed and the date the constitutional amendment set out in the schedule comes into force, the government of Canada, the provincial governments and the aboriginal peoples of Canada shall initiate negotiations required by that amendment.

6. Periodic reports on the progress of negotiations pursuant to the constitutional amendment set out in the schedule shall be made to the ministerial meetings referred to in article 8 of this Accord.

## PART II

## PREPARATIONS FOR CONSTITUTIONAL CONFERENCE

- 7. In preparation for the second constitutional conference required by section 37.1 of the Constitution Act, 1982, the government of Canada and the provincial governments shall, with the participation of representatives of the aboriginal peoples of Canada and elected representatives of the governments of the Yukon Territory and the Northwest Territories, conduct such meetings as are necessary to deal with the items included in the agenda of the constitutional conference held on March 15 and 16, 1983 and listed in the 1983 Constitutional Accord on Aboriginal Rights and to deal with the constitutional proposals of the representatives of the aboriginal peoples of Canada.
- 8. Ministerial meetings, composed of designated ministers of the government of Canada and the provincial governments, representatives of the aboriginal peoples of Canada and elected representatives of the governments of the Yukon Territory and the Northwest Territories, under the chairmanship of a designated Minister of the government of Canada, shall be convened at least twice in the twelve month period immediately following the date this Accord is signed, and at least twice in the period between the end of that twelve month period and the date on which the second constitutional conference required by section 37.1 of the Constitution Act, 1982 is held.
- 9. The ministerial meetings referred to in article 8 of this Accord shall
  - (a) issue directions as to work to be undertaken by technical or other working groups and review and assess that work on a periodic basis;
  - (b) seek to reach agreement or consensus on issues to be laid before first ministers at the second constitutional conference required by section 37.1 of the Constitution Act, 1982; and
  - (c) receive periodic reports, in accordance with article 6 of this Accord, on the progress of negotiations referred to in that article.

## PART III

## GENERAL

- 10. Nothing in this Accord shall preclude, or substitute for, any bilateral or other discussions or agreements between governments and the various aboriginal peoples of Canada and, in particular, having regard to the authority of Parliament under Class 24 of section 91 of the Constitution Act, 1867, and to the special relationship that has existed and continues to exist between the Parliament and government of Canada and the peoples referred to in that Class, this Accord is made without prejudice to any bilateral process that has been or may be established between the government of Canada and those peoples.
- 11. Nothing in this Accord shall be construed so as to affect the interpretation of the Constitution of Canada.

### RESOLUTION

Motion for a Resolution to authorize an amendment to the Constitution of Canada

- WHEREAS the Constitution Act, 1982 provides that an amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by resolutions of the Senate and House of Commons and resolutions of the legislative assemblies as provided for in section 38 thereof;
- NOW THEREFORE the (Senate) (House of Commons) (legislative assembly) resolves that an amendment to the Constitution of Canada be authorized to be made by proclamation issued by Her Excellency the Governor General under the Great Seal of Canada in accordance with the schedule hereto.

1. The Constitution Act, 1982 is amended by adding thereto, immediately after section 35 thereof, the following sections:

Rights to self-government

35.01 The aboriginal peoples of Canada have the right to self-government within Canada.

Elaboration of rights by agreement

35.02 (1) The rights of the aboriginal peoples of Canada to self-government may be elaborated in agreements concluded pursuant to this section.

Commitment to negotiate and conclude agreements

(2) The government of Canada and the governments of the provinces are committed, to the extent that each has jurisdiction, to participating in negotiations for the purpose of concluding agreements relating to self-government with representatives appointed for that purpose by aboriginal peoples living in particular communities or regions, which peoples have expressed their desire to enter into those agreements.

Constitutional protection of rights

(3) The rights of aboriginal peoples in agreements pursuant to this section are hereby recognized and affirmed.

Non-derogation

(4) Nothing in this section shall be construed so as to derogate from subsection 35(1) or section 35.01.

2. Section 61 of the said Act is repealed and the following substituted therefor:

# References:

- "61. A reference to the Constitution Act, 1982, or a reference to the Constitution Acts 1867 to 1982, shall be deemed to include a reference to any amendments thereto."
- 3. This Amendment may be cited as the Constitution Amendment, (year of proclamation) (Aboriginal peoples of Canada.)

CA1 Z 2 -C 52

DOCUMENT: 800-20/029

CONFÉRENCE DES PREMIERS MINISTRES
SUR LES QUESTIONS
CONSTITUTIONNELLES INTÉRESSANT LES AUTOCHTONES

Projet d'Accord constitutionnel
relatif aux peuples autochtones du Canada

Assemblée des premières nations



OTTAWA (Ontario) Les 2 et 3 avril 1985



# ÉBAUCHE DE L'APN

# 1ER AVRIL, 1985

# PROJET D'ACCORD CONSTITUTIONNEL

# RELATIF AUX PEUPLES AUTOCHTONES DU CANADA

- CONSIDÉRANT que les peuples autochtones du Canada, étant les descendants des premiers habitants du Canada, sont des peuples uniques parmi la société canadienne jouissant des droits qui découlent de leur statut de peuples autochtones ainsi que des traités et des ententes des revendications territoriales, il convient
  - (a) que leurs droits soient élaborés dans la Constitution du Canada,
  - (b) qu'ils aient la possibilité d'exercer leurs pleins droits, ainsi que de prendre des dispositions qui correspondraient a leurs droits spéciaux concernant l'autonomie gouvernementale, et
  - (c) qu'ils soient libres de vivre selon leur propre patrimoine culturel et d'utiliser et maintenir l'usage de leurs langues distinctes;
- CONSIDÉRANT QUE, en application de l'article 37.1 de l'Acte constitutionnel de 1982, une conférence constitutionnelle, réunissant le Premier Ministre du Canada et les premiers ministres provinciaux fut tenue les 2 et 3 avril, 1985, à laquelle furent invités les représentants des peuples autochtones du Canada et les représentants élus des gouvernements du Yukon et des Territoires du Nord-Ouest:
- ET CONSIDÉRANT QU'il fut convenu par le gouvernement du Canada et les gouvernements provinciaux, avec l'appui des représentants des peuples autochtones du Canada et les représentants élus des gouvernements du Territoire du Yukon et des Territoires du Nord-Ouest, que
  - (a) la Constitution du Canada soit modifiée de manière à reconnaître et affirmer d'une manière explicite les droits des peuples autochtones du Canada à l'autonomie gouvernementale au sein du Canada et que les gouvernements du Canada et des provinces puissent négocier des accords avec les peuples autochtones du Canada élaborant ces droits;

- (b) que la Constitution du Canada soit de plus modifiée pour rendre plus précises les provisions relatives à l'égalité des droits des autochtones des deux sexes,
- (c) que les gouvernements et les peuples autochtones bénéficient d'un plus haut degré de collaboration fédérale-provinciale en ce qui concerne les matières affectant les peuples autochtones du Canada,
- (d) des directives soient fournies pour la continuation des discussions menant à la deuxième conférence constitutionnelle requise par l'article 37.1 de l'Acte constitutionnel de 1982;
- QU'II. SOIT RÉSOLU QUE les gouvernements fédéral et provinciaux conviennent ce qui suit:

## PARTIE I

### AUTONOMIE GOUVERNEMENTALE

- 1. Le Premier Ministre du Canada et les premiers ministres provinciaux déposeront ou feront déposer avant le 31 décembre, 1985, devant le Sénat et la Chambre des Communes et devant les assemblées législatives respectivement, une résolution, établie dans la forme de celle qui figure à l'annexe I, autorisant la modification de la Constitution du Canada par proclamation de Son Excellence le Gouverneur général sous le Grand Sceau du Canada.
- 2. Les accords visés au projet d'alinéa 35.02 de l'Acte constitutionnel de 1982, décrit à l'annexe I auront pour objet ce qui suit:
  - (a) que les accords relatifs à l'autonomie gouvernementale des peuples autochtones puissent englober une variété de dispositions fondées sur les droits besoins et circonstances particuliers de ces peuples, y compris gouvernement à fondement ethnique, gouvernement public et modifications existantes aux structures gouvernementales;
  - (b) l'existence d'une assise territoriale pour les peuples autochtones concernés;
  - (c) les droits autochtones et issus de traités ou autres droits et libertés des peuples autochtones concernés;

- (d) les droits et libertés des personnes non-autochtones dans les communautés et régions où les peuples autochtones vivent; et
- (e) les ententes des revendications territoriales en train d'être négociées.
- 3. Les négociations auxquelles il est référé à l'article 2 de cet accord peuvent traiter de toute matière appropriée à l'autonomie gouvernementale, parmi d'autres sujets,
  - (a) la citoyenneté des peuples autochtones concernés;
  - (b) le rapport juridictionnel entre les institutions autonomes gouvernementales des autochtones et les institutions des gouvernements fédéral et provinciaux;
  - (c) la définition des zones géographiques sur lesquelles les institutions gouvernementales autonomes exerceront leur juridiction;
  - (d) les droits de propriété des terres et ressources situées à l'intérieur des territoires traditionnels des peuples autochtones concernés;
  - (e) les responsabilités envers et les programmes et services qui doivent être fournis par les institutions de gouvernement autonomes;
  - (f) les arrangements fiscaux et autres bases de soutien économique pour les institutions gouvernementales autonomes;
  - (g) les droits distincts des peuples autochtones; et
  - (h) des provisions concernant la révision et les modifications futures desdits accords.
- 4. Les buts des négociations, en application de l'article 35.02 de l'Acte constitutionnel de 1982, décrit à l'annexe I seront de conclure des accords relatifs à la juridiction, aux terres et ressources des peuples autochtones du Canada.
- 5. Durant la période comprise entre la date à laquelle cet accord est signé et la date de la modification constitutionnelle décrite à l'annexe sera mise en vigueur, le gouvernement du Canada, les gouvernements provinciaux et les peuples autochtones du Canada initieront les négociations requises par cette modification.

6. Des états périodiques sur le progrès des négociations en application de la modification constitutionnelle établie à l'annexe seront faits aux réunions ministérielles auxquelles il est référé à l'article 8 de cet Accord.

## PARTIE II

# PRÉPARATIONS POUR LA CONFÉRENCE CONSTITUTIONNELLE

- 7. En préparation à la deuxième conférence constitutionnelle requise par l'article 37.1 de l'Acte constitutionnel de 1982,, les gouvernements du Canada et provinciaux devront, avec la participation des représentants des peuples autochtones du Canada et les représentants élus des gouvernements du Territoire du Yukon
  et des Territoires du Nord-Ouest, tenir les réunions
  nécessaires pour traiter des articles inclus à l'ordre
  du jour de la conférence constitutionnelle des 15 et
  16 mars, 1983 et énumérés dans l'Accord constitutionnel de 1983 sur les droits des autochtoes et qui traitent des projets constitutionnels des représentants des
  peuples autochtones du Canada.
- 8. Des réunions ministérielles réunissant les ministres désignés des gouvernements du Canada et des gouvernements provinciaux, les représentants des peuples autochtones du Canada et les représentants élus des gouvernements du Yukon et des Territoires du Nord-Ouest, sous la présidence d'un ministre désigné par le gouvernement du Canada, seront convenues au moins deux fois dans une période de douze mois suivant immédiatement la date à laquelle cet Accord est signé et au moins deux fois durant la période entre la fin de cette période de douze mois et la date à laquelle la deuxième conférence constitutionnelle requise par l'article 37.1 de l'Acte constitutionnel de 1982 est tenue.
- 9. Les réunions ministérielles auxquelles il est référé à l'article 8 de cet Accord
  - (a) émettront des directives concernant le travail qui devra être effectué par les groupes de travail techniques ou autres et étudieront et évalueront le travail d'une manière périodique;
  - (b) rechercher l'atteinte d'un accord ou d'un consensus sur les matières déposées auprès des ministres lors de la deuxième conférence constitutionnelle requise par l'article 37.1 de l'Acte constitutionnel de 1982; et

(c) recevoir des états périodiques, suivant l'article 6 de cet Accord, sur le progrès des négociations auxquelles il est référé dans cet article.

#### PARTIE III

# DISPOSITIONS GÉNÉRALES

- 10. Le présent accord n'a pas pour effet d'empêcher ou de remplacer les discussions, bilatérales ou autres, ou la conclusion d'accords entre les gouvernements et les divers peuples autochtones du Canada et, en particulier, concernant l'autorité du Parlement d'après la Classe 24 de l'article 91 de l'Acte constitutionnel de 1867 et le rapport spécial qui a existé et continue d'exister entre le Parlement et le gouvernement du Canada et les peuples auxquels il est fait référence dans cette classe, cet Accord ne portera préjudice à tout processus bilatéral qui a été établi ou pourrait être établi entre le gouvernement du Canada et ces peuples.
- 11. Le présent Accord n'a pas pour effet de modifier l'interprétation de la Constitution du Canada.

Motion de résolution autorisant la modification de la Constitution du Canada.

- ATTENDU QUE la Loi constitutionnelle de 1982 prévoit que la Constitution du Canada peut être modifiée par proclamation du Gouverneur général sous le Grand Sceau du Canada, autorisée à la fois par des résolutions du Sénat et de la Chambre des Communes et par des résolutions des Assemblées législatives dans les conditions prévues à l'article 38,
- MAINTENANT DONC le (Sénat) (Chambre des Communes) (Assemblée législative) a résolu d'autoriser la modification de la Constitution du Canada par proclamation de Son Excellence le Gouverneur général sous le Grand Sceau du Canada, en conformité avec l'annexe ci-jointe.

# PROJETS D'AMENDEMENTS DE L'ACTE CONSTITUTIONNEL DE 1982

1. L'Acte constitutionnel de 1982 est modifié par insertion, immédiatement après l'article 35, de ce qui suit:

Droits à l'autonomie gouvernementale

35.01 Les peuples autochtones du Canada ont droit à l'autonomie gouvernementale à l'
intérieur du Canada.

Elaboration des droits au moyen d'accords

35.02 (1) Les droits des peuples autochtones du Canada à l'autonomie gouvernementale peuvent être élaborés au cours d'accords conclus en application de cet article.

Engagement relatif aux négociations

(2) Le gouvernement du Canada et les gouvernements des provinces s'engagent, dans la mesure de leur compétence respective, de participer aux négociations en vue de conclure des accords relatifs à l'autonomie gouvernementale avec des représentants des peuples autochtones vivant au sein de collectivités ou dans des régions particulières dont les peuples ont exprimé le désir de conclure de tels accords.

Protection constitutionnelle des droits

(3) Les droits des peuples autochtones dans les accords conformes à cet article sont reconnus et affirmés par la présente.

Non dérogation

(4) Cet article n'a pas pour effet de déroger du paragraphe 35(1) ni de l' article 35.01. 2. L'article 61 dudit Acte est abrogé et ce qui suit est substitué:

# Références:

- 61. La référence à l'Acte constitutionnel de 1982 ou la référence aux Actes constitutionnels de 1867 et 1982 inclueront une référence aux amendements ci-inclus.
- 3. Cette modification peut être citée comme l'amendement constitutionnel, (année de proclamation) (Peuples autochtones du Canada).

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FIRST MINISTERS' CONFERENCE

· A Foll

ON

ABORIGINAL CONSTITUTIONAL MATTERS

NOTES FOR

OPENING REMARKS

BY

THE HONOURABLE GRANT DEVINE



SASKATCHEWAN

OTTAWA

April 2-3, 1985



MR. PRIME MINISTER, MY FELLOW PREMIERS, REPRESENTATIVES OF THE ABORIGINAL PEOPLES.

THE RECENT FIRST MINISTERS' CONFERENCE ON THE ECONOMY REPRESENTED

A NEW ERA OF CONSULTATION AND COOPERATION IN CANADA AND I MIGHT

ADD, MR. PRIME MINISTER THAT THE RURAL AND URBAN MUNICIPAL

GOVERNMENTS IN THE PROVINCE OF SASKATCHEWAN HAVE RESPONDED

QUICKLY TO YOUR CHALLENGE OF BUILDING ON STRENGTHS.

SIMILARLY THE ENERGY AGREEMENT CONCLUDED LAST WEEK IS BUT THE

LATEST EXAMPLE THAT THE WORK BEGUN AT THE REGINA FIRST MINISTERS'

CONFERENCE IS PRODUCING POSITIVE, TANGIBLE RESULTS. AND AS I

SAID IN REGINA, THE WHOLE COUNTRY APPLAUDED THE HISTORIC ACCORD

WITH NEWFOUNDLAND ON THE OFFSHORE. IN SHORT, MR. PRIME MINISTER,

YOUR PROCESS IS WORKING.

I AM OPTIMISTIC THAT THE PARTIES AT THIS TABLE CAN BEGIN
TODAY TO BUILD UPON THIS NEW SPIRIT - TO DEVELOP A PROCESS
THAT WILL ADDRESS THE NEEDS AND ASPIRATIONS OF THE
ABORIGINAL PEOPLES OF THIS COUNTRY, AND CONTINUE TO BUILD
ON OUR STRENGTHS. IN EACH CASE, THE NEGOTIATIONS HAVE BEEN
DIFFICULT, BUT WITH COMMON SENSE IN THE CHAIR, IN EACH
INSTANCE WE HAVE SEEN REALISTIC AND POSITIVE RESULTS.
AGAIN I SAY IT'S NOT EASY, BUT IT'S POSSIBLE.

FOR OUR PART, WE IN SASKATCHEWAN ARE COMMITTED TO THE ENHANCEMENT OF THE POSITION AND ROLE OF CANADA'S ABORIGINAL PEOPLES.

BEFORE WE LOOK INTO WHAT IS POSSIBLE AT THIS FIRST MINISTERS'
CONFERENCE, I THINK WE NEED TO REMIND OURSELVES WHERE WE
LEFT THINGS IN MARCH, 1984.

I SAY THIS BECAUSE SOME BELIEVE WE DIDN'T MOVE FAST ENOUGH IN 1984.

AT LAST YEAR'S CONFERENCE I MADE SOME COMMITMENTS ON BEHALF
OF SASKATCHEWAN RESIDENTS.

IN A DESIRE TO SEE REAL RESULTS FOR ABORIGINAL COMMUNITIES,

SASKATCHEWAN SET OUT TO WORK CLOSELY WITH THE FEDERAL

GOVERNMENT AND ABORIGINAL PEOPLES IN SEVERAL KEY AREAS

OVER THE LAST YEAR.

I WANT TO GIVE YOU A COUPLE OF EXAMPLES.

1. IN DECEMBER, THE GOVERNMENT ESTABLISHED AN INNOVATIVE

APPROACH TO INDIAN TREATY LAND ENTITLEMENT. THAT

APPROACH OPENS UP A WHOLE NEW RANGE OF ECONOMIC DEVELOPMENT

POSSIBILITIES TO AN ENTITLEMENT BAND.

I AM PLEASED TO REPORT THAT THE FIRST SETTLEMENT IN FULL,

THAT OF THE FOND DU LAC BAND'S ENTITLEMENT HAS JUST BEEN

GIVEN APPROVAL-IN-PRINCIPLE BY THE GOVERNMENT OF SASKATCHEWAN.

- 2. IN REGARD TO THE METIS WHO HAVE SUCH AN IMPORTANT POSITION IN THE HISTORY AND CONTEMPORARY LIFE OF SASKATCHEWAN, THE PROVINCE HAS RECENTLY COMMITTED FUNDS TO THE METIS FOR THE PURPOSE OF PURCHASING LAND AT BATOCHE. AN IMPORTANT AND SYMBOLIC ACT.
- 3. WE HAVE BROUGHT TO THIS FORUM THE RESULTS OF THE JOINT WORK

  UNDERTAKEN BY THE ASSOCIATION OF METIS AND NON-STATUS

  INDIANS OF SASKATCHEWAN AND THE GOVERNMENT OF SASKATCHEWAN

  ON PREFERRED APPROACHES TO METIS IDENTIFICATION AND ENUMERATION.

AT THIS CONFERENCE, THE PROVINCE OF SASKATCHEWAN HOPES TO SEE AN AGREEMENT REACHED TO BEGIN ALL-PARTY WORK ON THIS BASIC ISSUE.

- 4. AT PRESENT, ABORIGINAL PEOPLE IN SASKATCHEWAN ALSO HAVE

  UNDER THEIR CONTROL FOUR POST-SECONDARY EDUCATIONAL

  INSTITUTIONS, SEVEN ECONOMIC DEVELOPMENT INSTITUTIONS OPERATING

  AT BOTH THE REGIONAL AND PROVINCIAL LEVEL, AND AN AGREEMENT NOW

  TO STUDY THE FEASIBILITY OF CREATING INDIAN JUSTICE SYSTEMS

  WITHIN THE CONTEXT OF OUR PRESENT SYSTEM.
- 5. IN CONJUNCTION WITH THE PRIVATE SECTOR, FEDERAL AND MUNICIPAL GOVERNMENTS, THE PROVINCE HAS FUNDED 116 INDIAN ECONOMIC DEVELOPMENT PROJECTS WORTH MILLIONS OF DOLLARS.

  MOST OF THESE PROJECTS HAVE BEEN MOUNTED AT THE BAND LEVEL AND THEY HAVE BEEN INSTRUMENTAL IN THE DEVELOPMENT OF MANY NEW INDIAN ENTERPRISES.

WHILE PEOPLE LIVING ON RESERVES ARE TECHNICALLY AND LEGALLY A
FEDERAL RESPONSIBILITY, THE PEOPLE OF SASKATCHEWAN VIEW THEM
AS SASKATCHEWAN PEOPLE AND THEREFORE THEY ARE TREATED
ACCORDINGLY.

BUT WE ARE COMMITTED TO DOING MORE.

IN THIS REGARD, THE GOVERNMENT OF SASKATCHEWAN RECENTLY
RELEASED A POLICY PAPER ON ABORIGINAL ECONOMIC DEVELOPMENT.

IN THE PAPER, THE

GOVERNMENT OF SASKATCHEWAN HAS COMMITTED ITS RESOURCES TO THE

ACTIVE DEVELOPMENT OF ECONOMIC OPPORTUNITIES FOR

ABORIGINAL PEOPLES IN THE PROVINCE.

NOW YOU MIGHT ASK WHY I GO THROUGH THESE FEW EXAMPLES.
YOU MAY SAY "THAT'S

ALL VERY WELL, BUT THIS FORUM IS CONCERNED WITH THE CONSTITUTION AND CONSTITUTIONAL CHANGE".

WHILE RESPECTING THAT VIEW, I WOULD SUGGEST THAT
CONSTITUTIONAL CHANGE SHOULD NOT BE VIEWED
IN THE ABSTRACT OR IN ISOLATION.

SOCIAL, AND ECONOMIC, POLITICAL AND INSTITUTIONAL CHANGE
GO HAND IN HAND IN THE PROVINCE OF SASKATCHEWAN.

ACCORDINGLY, WE MUST BE SURE THAT WE DO NOT FORGET OR NEGLECT DEVELOPMENT OF THE ECONOMIC AND HUMAN RESOURCES THAT WILL PROVIDE THE BASIS FOR THE SELF-SUFFICIENCY OF ABORIGINAL COMMUNITIES WHETHER THEY BE ON RESERVES OR IN DOWNTOWN URBAN NEIGHBOURHOODS.

IN THIS REGARD, WE SHOULD NOT LOSE SIGHT OF THE AMERICAN

EXPERIENCE. ALTHOUGH THE SELF-GOVERNMENT OF AMERICAN INDIAN

NATIONS IS RECOGNIZED IN LAW, WE CAN POINT TO ONLY A HANDFUL

OF AMERICAN INDIAN TRIBES WHO ARE ECONOMICALLY SELF-SUFFICIENT.

WE DO NOT SEE THE U.S. EXPERIENCE AS THE CANADIAN SOLUTION.

THE AGENDA WE HAVE BEFORE US TODAY PRESENTS US WITH SIGNIFICANT OPPORTUNITIES.

BUT ALSO WITH SIGNIFICANT CHALLENGES.

THE CONCEPT OF

ABORIGINAL SELF-GOVERNMENT WILL CLEARLY BE THE MOST SIGNIFICANT AND DIFFICULT ISSUE THAT WE MUST ADDRESS AT THIS CONFERENCE.

THE DEFINITION OF SELF-GOVERNMENT CHANGES BY PROVINCE,
BY REGION, BY GROUP, AND BETWEEN RURAL AND URBAN COMMUNITIES.

OPINION CONTINUE TO EXIST AT THIS TIME ON THE MEANING OF ABORIGINAL SELF-GOVERNMENT AT THIS TABLE, RIGHT NOW.

WE HAVE BEEN OF THE VIEW THAT THERE SHOULD BE A GREATER DEGREE OF CONSENSUS ABOUT THE MEANING AND IMPLICATIONS OF ABORIGINAL SELF-GOVERNMENT BEFORE IT IS CAST IN STONE.

THAT IS WHY, AT THIS STAGE, SASKATCHEWAN HAS PREFERRED TO DEAL WITH THE QUESTION OF ABORIGINAL SELF-GOVERNMENT THROUGH A POLITICAL COMMITMENT.

AND LET THERE BE NO DOUBT. I UNDERSTAND THE SYMBOLIC SIGNIFICANCE OF A CONSTITUTIONAL CHANGE.

IN THE DOCUMENT WHICH WE TABLED IN TORONTO WE OUTLINED SEVERAL SPECIFIC COMMITMENTS WHICH WE WANTED TO SEE TAKE PLACE:

- 1. A COMMITMENT TO NEGOTIATE MORE PARTICIPATION IN

  ECONOMIC AND POLITICAL DECISION MAKING WHICH AFFECTS

  ABORIGINAL PEOPLE, INCLUDING, WHERE APPROPRIATE, THE

  ESTABLISHMENT OR RECOGNITION OF VARIOUS INSTITUTIONS OF

  SELF-GOVERNMENT.
- 2. A COMMITMENT TO COMPLETE AN ENUMERATION

  OF ABORIGINAL PEOPLES BY THE 1987 FIRST MINISTERS!

  CONFERENCE.

- 3. A COMMITMENT BETWEEN THE PARTIES AT THIS TABLE TO

  DEFINE
  THE FUTURE ROLES AND RESPONSIBILITIES OF
  GOVERNMENTS IN RELATION TO ABORIGINAL PEOPLES.
- 4. A COMMITMENT THAT THIS BE UNDERTAKEN BETWEEN 1985 AND

I BELIEVE THAT THESE COMMITMENTS BY PEOPLE IN SASKATCHEWAN

ARE REAL AND REPRESENT COMMON SENSE PROGRESS:

WE RECEIVED THE FINAL VERSION OF THE FEDERAL PROPOSAL YESTERDAY

AND WE WERE VERY PLEASED TO NOTE THAT A GOOD DEAL OF WHAT WE HAVE

TALKED ABOUT OVER THE LAST FEW MONTHS HAS BEEN INCORPORATED IN

THE FEDERAL PROPOSAL.

IN PARTICULAR, SOME OF THE FACTORS THAT WE THINK ARE IMPORTANT IN CONSIDERING THE DEVELOPMENT OF ABORIGINAL SELF-GOVERNMENT HAVE BEEN REFLECTED IN THE FEDERAL DRAFT.

IN RELATION TO THE PROPOSAL FOR AN AMENDMENT, WE CAN SEE THAT MANY OF THE CONCERNS WHICH WE, AND OTHERS AROUND THE TABLE, HAVE EXPRESSED AT PREPARATORY MEETINGS, HAVE BEEN TAKEN INTO CONSIDERATION.

WE CONGRATULATE YOU AND YOUR OFFICIALS ON YOUR EFFORTS TO BE RESPONSIVE TO THE VERY REAL CONCERNS WHICH ALL PARTICIPANTS HAVE EXPRESSED.

I WISH I COULD SAY THAT ALL OUR CONCERNS HAVE BEEN LOOKED AFTER
IN THIS MOST RECENT DRAFT THAT WE RECEIVED YESTERDAY AFTERNOON.

BUT THAT IS NOT THE CASE.

WE STILL HAVE A NUMBER OF VERY REAL CONCERNS RELATED TO

(1) THE NATURE OF THE UNDEFINED COMMITMENT WHICH THE AMENDMENT WOULD REQUIRE US TO UNDERTAKE, AND (2) THE POSSIBILITY THAT COURTS MIGHT BE INVITED TO INTERFERE AND INTERVENE IN THE WAY IN WHICH THAT COMMITMENT IS ACTED UPON.

IT SEEMS TO ME THAT THESE NEED TO BE DISCUSSED IN SOME DETAIL, AND I BELIEVE THIS IS THE PLACE TO DO IT.

I WILL BE PREPARED TO ELABORATE ON THESE CONCERNS LATER IN THE CONFERENCE AT ANY TIME.

MR. PRIME MINISTER, I AM NOT A MAN WHO SEEKS CONFRONTATION.

I CAN'T THINK OF ANYBODY ELSE IN CANADA THAT I'D RATHER

COOPERATE WITH THAN THE CHAIRMAN. I PREFER A HUG TO

CONFRONTATION.

SO I RETURN TO MY OPENING COMMENT. IN PREVIOUS NEGOTIATIONS,

MR. PRIME MINISTER, THERE HAVE BEEN SERIOUS AND HONEST

DIFFERENCES AND DISCUSSIONS, BUT IN MY VIEW COMMON SENSE

HAS PREVAILED AND IN EACH INSTANCE SUCCESS HAS RESULTED.

I BELIEVE THAT THE SAME CAN HAPPEN AT THIS CONFERENCE, AND

I LOOK FORWARD TO THE DISCUSSIONS.

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Traduction du Secrétariat

## CONFÉRENCE DES PREMIERS MINISTRES

SUR LES

QUESTIONS CONSTITUTIONNELLES INTÉRESSANT LES AUTOCHTONES

NOTES POUR

L'ALLOCUTION D'OUVERTURE

DE

M. GRANT DEVINE



SASKATCHEWAN

OTTAWA Les 2 et 3 avril 1985



MONSIEUR LE PRÉSIDENT, MESSIEURS LES PREMIERS MINISTRES ET MESSIEURS LES REPRÉSENTANTS DES PEUPLES AUTOCHTONES.

LA RECENTE CONFERENCE DES PREMIERS MINISTRES SUR L'ECONOMIE A
MARQUE LE DEBUT D'UNE NOUVELLE ERE DE CONSULTATION ET DE
COLLABORATION AU CANADA. ET J'AJOUTERAI, MONSIEUR LE PREMIER
MINISTRE, QUE LES ADMINISTRATIONS DES COMMUNAUTÉS RURALES ET
URBAINES DE LA SASKATCHEWAN ONT RELEVE SANS ATTENDRE LE DEFI QUE
VOUS AVIEZ LANCE: BÂTIR NOTRE AVENIR SUR DES APPUIS SOLIDES. DE
MEME, LE NOUVEL ACCORD SUR L'ENERGIE CONCLU LA SEMAINE DERNIÈRE
N'EST QU'UN EXEMPLE, DERNIER EN LISTE, QUI PROUVE QUE LE TRAVAIL
AMORÇE À LA CONFERENCE DES PREMIERS MINISTRES DE REGINA DONNE DES
RÉSULTATS CONCRETS. ET COMME JE L'AVAIS DIT À REGINA, TOUT LE
PAYS APPLAUDIT À L'ACCORD HISTORIQUE CONCLU AVEC TERRE-NEUVE SUR
LES RESSOURCES AU LARGE DES CÔTES. BREF, MONSIEUR LE PRÉSIDENT,
VOTRE OPÉRATION FONCTIONNE.

J'AI L'OPTIMISME DE CROIRE QUE LES PARTIES À CETTE TABLE PEUVENT
COMMENCER DES AUJOURD'HUI À TIRER PARTI DE CE NOUVEL ESPRIT ET À
ÉLABORER UN PROCESSUS QUI TIENDRA COMPTE DES BESOINS ET DES
ATTENTES DES PEUPLES AUTOCHTONES DU PAYS. ELLES DOIVENT
ÉGALEMENT POURSUIVRE LA RÉALISATION DU DÉFI POSÉ. DANS TOUS LES
CAS, LES NÉGOCIATIONS ONT ÉTÉ ÉPINEUSES, MAIS GRÂCE AU BON SENS
DE NOTRE PRÉSIDENT, CHAQUE FOIS, LES RÉSULTATS ONT ÉTÉ HEUREUX ET
RÉALISTES. JE LE RÉPÉTE, CE N'EST PAS FACILE, MAIS C'EST
POSSIBLE.

POUR SA PART, LA SASKATCHEWAN S'EST ENGAGÉE À AMÉLIORER LA POSITION ET LE RÔLE DES PEUPLES AUTOCHTONES DU CANADA.

AVANT D'ABORDER CE QU'IL EST POSSIBLE DE FAIRE À LA CONFÉRENCE

DES PREMIERS MINISTRES, JE CROIS QUE NOUS DEVONS NOUS REMETTRE EN

MEMOIRE OU EN ÉTAIENT LES CHOSES EN MARS 1984.

JE TIENS À FAIRE CE RAPPEL PARCE QUE D'AUCUNS CROIENT QUE NOUS N'AVONS PAS AGI AVEC SUFFISAMMENT DE CÉLÉRITÉ EN 1984.

A LA CONFÉRENCE DE L'AN DERNIER, J'AI PRIS CERTAINS ENGAGEMENTS AU NOM DES RÉSIDENTS DE LA SASKATCHEWAN.

POUR EN ARRIVER À DES RÉSULTATS CONCRETS DANS LES COLLECTIVITÉS
AUTOCHTONES, LA SASKATCHEWAN, AU COURS DE L'ANNÉE ÉCOULÉE,
S'ÉTAIT DONNÉ POUR MISSION DE TRAVAILLER EN ÉTROITE COLLABORATION
AVEC LE GOUVERNEMENT FÉDÉRAL ET LES AUTOCHTONES DANS PLUSIEURS
DOMAINES IMPORTANTS.

PERMETTEZ-MOI DE VOUS DONNER OUELOUES EXEMPLES.

1. EN DÉCEMBRE, LE GOUVERNEMENT A TROUVÉ UNE FAÇON NOVATRICE DE TRAITER LA QUESTION DES DROITS FONCIERS DES INDIENS RECONNUS PAR TRAITE. AINSI, TOUTE UNE NOUVELLE GAMME DE POSSIBILITES DE DÉVELOPPEMENT ÉCONOMIQUE S'OUVRE AUX BANDES CONCERNÉES.

JE SUIS HEUREUX DE VOUS FAIRE PART DU PREMIER RÉGLEMENT

COMPLET, CELUI DES DROITS FONCIERS DE LA BANDE DU FOND DU LAC

QUI VIENT TOUT JUSTE DE RECEVOIR L'APPROBATION DE PRINCIPE DU

GOUVERNEMENT DE LA SASKATCHEWAN.

- 2. QUANT AUX MÉTIS QUI OCCUPENT UNE SI LARGE PLACE DANS
  L'HISTOIRE ET LA VIE CONTEMPORAINE DE LA SASKATCHEWAN, LA
  PROVINCE A RÉCEMMENT PROMIS DES FONDS AUX MÉTIS POUR L'ACHAT
  DE TERRES À BATOCHE: ACTE SYMBOLIQUE QUI REVÊT UNE GRANDE
  IMPORTANCE.
- 3. NOUS AVONS COMMUNIQUE À CETTE TRIBUNE LES RÉSULTATS DU

  TRAVAIL EFFECTUÉ CONJOINTEMENT PAR L'ASSOCIATION DES MÉTIS ET

  DES INDIENS NON INSCRITS DE LA SASKATCHEWAN ET LE

  GOUVERNEMENT DE LA SASKATCHEWAN SUR LA MEILLEURE FAÇON DE

  DÉFINIR ET DE RECENSER LES MÉTIS.

A CETTE CONFERENCE, LA PROVINCE DE LA SASKATCHEWAN ESPÈRE QUE TOUTES LES PARTIES POURRONT S'ENTENDRE ET COMMENCER À TRAVAILLER SUR CETTE QUESTION FONDAMENTALE.

4. A L'HEURE ACTUELLE, LES PEUPLES AUTOCHTONES DE LA SASKATCHEWAN ADMINISTRENT QUATRE ÉTABLISSEMENTS

D'ENSEIGNEMENT POSTSECONDAIRE ET SEPT INSTITUTIONS DE

DÉVELOPPEMENT ÉCONOMIQUE FONCTIONNANT AUX ÉCHELONS RÉGIONAL ET PROVINCIAL. DE PLUS, UNE ENTENTE A ÉTÉ CONCLUE POUR ÉTUDIER LA POSSIBILITÉ DE CRÉER DES SYSTÈMES JUDICIAIRES INDIENS AU SEIN DU SYSTÈME EN PLACE.

5. DE CONCERT AVEC LE SECTEUR PRIVÉ, LE GOUVERNEMENT FÉDÉRAL ET
LES MUNICIPALITÉS, LA PROVINCE A FINANCÉ 116 PROJETS DE
DÉVELOPPEMENT ÉCONOMIQUE INDIENS DE PLUSIEURS MILLIONS DE
DOLLARS. LA PLUPART DE CES PROJETS SONT NÉS AU NIVEAU DES
BANDES ET ONT CONTRIBUÉ À L'ESSOR DE NOMBREUSES ENTREPRISES
INDIENNES.

EN PRINCIPE, LES GENS VIVANT SUR LES RÉSERVES RELEVENT,
D'APRÈS LA LOI, DU GOUVERNEMENT FEDERAL, MAIS LES HABITANTS
DE LA SASKATCHEWAN LES CONSIDÈRENT COMME DES LEURS ET LES
TRAITENT AINSI.

MAIS NOUS NOUS SOMMES ENGAGES À FAIRE PLUS.

A CET EGARD, LE GOUVERNEMENT DE LA SASKATCHEWAN A

DERNIÈREMENT RENDU PUBLIC UN ENONCE DE PRINCIPE SUR LE

DÉVELOPPEMENT ÉCONOMIQUE DES AUTOCHTONES. IL S'Y ENGAGE À SE

SERVIR DE SES RESSOURCES POUR AMELIORER LES CHANCES OFFERTES

AUX PEUPLES AUTOCHTONES DE LA PROVINCE.

VOUS VOUS DEMANDEZ PEUT-ÊTRE POURQUOI JE CITE CES EXEMPLES.

VOUS NE VOYEZ PEUT-ÊTRE PAS CE QUE CELA VIENT FAIRE DANS UNE

CONFÉRENCE CONSTITUTIONNELLE.

SANS VOULOIR VOUS CONTREDIRE, J'AVANCERAI QU'AUCUNE

MODIFICATION CONSTITUTIONNELLE NE DOIT ÊTRE ENVISAGÉE DANS
L'ABSTRAIT OU EN VASE CLOS.

LES CHANGEMENTS INSTITUTIONNELS, POLITIQUES, ECONOMIQUES ET SOCIAUX SONT ETROITEMENT LIES EN SASKATCHEWAN.

PAR CONSEQUENT, NOUS DEVONS VEILLER À NE PAS OUBLIER NI
NEGLIGER LE DÉVELOPPEMENT DES RESSOURCES HUMAINES ET
ECONOMIQUES QUI PERMETTRONT AUX COLLECTIVITÉS AUTOCHTONES
D'ATTEINDRE L'AUTO-SUFFISANCE, QU'ELLES SE TROUVENT SUR LES
RESERVES OU DANS DES SECTEURS RÉSIDENTIELS EN PLEIN COEUR DE
NOS VILLES.

A CET EGARD, IL FAUT NE PAS PERDRE DE VUE L'EXPERIENCE

AMERICAINE. L'AUTONOMIE POLITIQUE DES NATIONS INDIENNES DES

ETATS-UNIS EST RECONNUE EN DROIT, MAIS SEULES QUELQUES TRIBUS

SONT ÉCONOMIQUEMENT AUTONOMES.

NOUS NE CONSIDERONS PAS L'EXPERIENCE AMERICAINE COMME LA SOLUTION À APPLIOUER AU CANADA.

L'ORDRE DU JOUR QUI NOUS EST PROPOSE OFFRE D'IMPORTANTES POSSIBILITÉS, MAIS AUSSI DES DEFIS IMPORTANTS À RELEVER.

LE PRINCIPE DE L'AUTONOMIE POLITIQUE DES AUTOCHTONES

CONSTITUERA CERTAINEMENT LE PROBLÈME LE PLUS GRAVE ET LE PLUS

DIFFICILE SUR LEQUEL NOUS DEVRONS NOUS PENCHER AU COURS DE LA

CONFÉRENCE.

LA DEFINITION DE CE PRINCIPE VARIE SELON LES PROVINCES, LES REGIONS, LES GROUPES ET SFLON LES COLLECTIVITES RURALES OU URBAINES.

IL EXISTE TOUJOURS, MÊME AUTOUR DE CÊTTE TABLE, DE GRANDES
DIVERGENCES D'OPINION QUANT À LA SIGNIFICATION DE L'AUTONOMIE
POLITIQUE DES AUTOCHTONES.

A NOTRE AVIS, AVANT QUE LE PRINCIPE NE DEVIENNE IRRÉVOCABLE,

IL DEVRAIT Y AVOIR UNE ENTENTE BEAUCOUP PLUS GENERALE

CONCERNANT LA SIGNIFICATION ET LES RÉPERCUSSIONS DE

L'AUTONOMIE POLITIQUE DES AUTOCHTONES.

C'EST POURQUOI, JUSQU'ICI, LA SASKATCHEWAN A PRÉFÉRÉ ABORDER
LA QUESTION DE L'AUTONOMIE POLITIQUE DES AUTOCHTONES AU MOYEN
D'UN ENGAGEMENT POLITIQUE.

QUE L'ON NE S'Y MÉPRENNE PAS. JE COMPRENDS FORT BIEN LA SIGNIFICATION SYMBOLIQUE D'UNE MODIFICATION

CONSTITUTIONNELLE.

DANS LE DOCUMENT QUE NOUS AVONS DÉPOSÉ À TORONTO, NOUS AVONS EXPOSÉ PLUSIEURS ENGAGEMENTS PARTICULIERS QUE NOUS PRÉCONISIONS, NOTAMMENT:

- 1. UN ENGAGEMENT À NÉGOCIER UNE PARTICIPATION ACCRUE DES
  PEUPLES AUTOCHTONES AU PROCESSUS DÉCISIONNEL QUI LES
  TOUCHE SUR LES PLANS ÉCONOMIQUE ET POLITIQUE, Y COMPRIS,
  AU BESOIN, L'ÉTABLISSEMENT OU LA RECONNAISSANCE DE
  DIVERSES INSTITUTIONS POLITIQUES.
- 2. UN ENGAGEMENT À EFFECTUER UN RECENSEMENT DES PEUPLES

  AUTOCHTONES AVANT LA CONFÉRENCE DES PREMIERS MINISTRES DE

  1987.
- 3. UN ENGAGEMENT ENTRE LES PARTIES ICI PRÉSENTES À
  DETERMINER LES RESPONSABILITÉS ET LES RÔLES DES
  GOUVERNEMENTS À L'ÉGARD DES PEUPLES AUTOCHTONES.

4. UN ENGAGEMENT A ENTREPRENDRE CES ACTIONS D'ICI 1987.

JE CROIS QUE CES ENGAGEMENTS DE LA PART DES GENS DE LA SASKATCHEWAN SONT SINCÈRES ET CONSTITUENT DES PROGRÈS DICTÉS PAR LE BON SENS.

NOUS AVONS REÇU HIER LA VERSION FINALE DE LA PROPOSITION
FEDERALE ET NOUS AVONS ETE RAVIS DE CONSTATER QU'ELLE REPREND
BON NOMBRE DE POINTS DONT NOUS AVONS DISCUTE AU COURS DES
DERNIERS MOIS.

LE PROJET FEDERAL RETIENT CERTAINS FACTEURS QUE NOUS JUGEONS IMPORTANTS POUR L'ETUDE DE LA MISE EN OEUVRE DE L'AUTONOMIE POLITIQUE.

NOUS REMARQUONS EGALEMENT QU'ON A TENU COMPTE D'UN BON NOMBRE DE PRÉOCCUPATIONS QUE NOTRE DÉLÉGATION ET D'AUTRES ONT MANIFESTÉES À DES RÉUNIONS PRÉPARATOIRES.

NOUS VOUS FELICITONS, AINSI QUE LES HAUTS FONCTIONNAIRES DE VOTRE GOUVERNEMENT, D'AVOIR ÉTÉ SENSIBLES AUX INQUIETUDES RÉELLES DE TOUS LES PARTICIPANTS.

J'AIMERAIS POUVOIR AFFIRMER QUE LA PLUS RÉCENTE VERSION REÇUE HIER APRÈS-MIDI APAISE TOUTES NOS CRAINTES, MAIS CE N'EST HELAS PAS LE CAS.

NOUS AVONS ENCORE DE VIVES INQUIETUDES FACE (1) AU CARACTÈRE DE L'ENGAGEMENT IMPRÉCIS QUE LA MODIFICATION NOUS OBLIGERAIT À PRENDRE, ET (2) À LA POSSIBILITÉ QUE LES TRIBUNAUX SOIENT APPELES À INTERVENIR ET À DÉTERMINER LA FORME À DONNER À CET ENGAGEMENT.

JE PENSE QU'IL FAUT EXAMINER CES ASPECTS EN DÉTAIL ET QUE L'ENDROIT NE SAURAIT ÊTRE MIEUX CHOISI.

JE SERAI PRÊT À TRAITER PLUS LONGUEMENT DES PRÉOCCUPATIONS EN QUESTION À N'IMPORTE QUEL MOMENT AU COURS DE LA CONFÉRENCE.

MONSIEUR LE PREMIER MINISTRE, JE NE CHERCHE PAS LA

CONFRONTATION ET PERSONNE DANS CE PAYS NE PEUT AUTANT QUE

VOUS M'INCITER À LA COLLABORATION. JE PRÉFÈRE L'HARMONIE À

LA CONFRONTATION.

JE REVIENS MAINTENANT À MON ALLOCUTION D'OUVERTURE. MONSIEUR
LE PREMIER MINISTRE, AU COURS DES NÉGOCIATIONS ANTÉRIEURES,
NOUS AVONS EU DES DIVERGENCES D'OPINIONS ET DES DISCUSSIONS

ANIMÉES, MAIS JE CROIS QUE LE BON SENS L'A EMPORTÉ ET QUE NOS EFFORTS ONT DANS CHAQUE CAS ÉTÉ COURONNÉS DE SUCCÈS.

JE SUIS CONVAINCU QU'IL EN SERA DE MÊME À LA PRÉSENTE CONFÉRENCE ET J'ATTENDS IMPATIEMMENT LES DISCUSSIONS.

DOCUMENT: 800-20/031

CA1 Z 2 -C 52



FIRST MINISTERS' CONFERENCE

ON

ABORIGINAL CONSTITUTIONAL MATTERS



OPENING STATEMENT

BY

HONOURABLE JAMES M. LEE

PRINCE EDWARD ISLAND



MR. PRIME MINISTER, FELLOW PREMIERS, ABORIGINAL LEADERS.

ALTHOUGH SOME OF THE FACES AT THIS CONFERENCE ARE NEW, THE ISSUES REMAIN CONSISTENT.

OUR COMMON GOALS IS TO ENSURE A FAIR AND EQUITABLE PLACE IN CANADIAN SOCIETY FOR ABORIGINAL PEOPLES. THE DISCUSSIONS WE HAVE HELD IN THE PAST ARE EXCEEDINGLY COMPLEX, AND HAVE LEAD TO SOME PROGRESS, BUT AT A VERY SLOW PACE. THAT IS NOT TO SAY THAT THE SLOW PROCESS HAS BEEN BAD. IT HAS ALLOWED THE FIRST MINISTERS, AND MANY CANADIANS TO GAIN A GREATER UNDERSTANDING OF THE COMPLEXITIES AND DIFFERENCES BETWEEN THE REGIONS AND THE VARIOUS ABORIGINAL GROUPS WITHIN THIS VAST COUNTRY. THERE IS NOT A QUICK OR AN IDEAL SOLUTION TO THE INEQUITIES THAT HAVE EXISTED IN THE PAST. BUT THERE ARE SOLUTIONS TO BE FOUND, AND BY WORKING TOGETHER, AND ONLY BY WORKING TOGETHER, WILL THEY BE ACHIEVED.

I BELIEVE, WE, AS FIRST MINISTERS, CAN RISE ABOVE OUR OTHER CONCERNS AND PROVIDE THE NECESSARY LEADERSHIP THAT WILL RESULT IN ENHANCING THE QUALITY OF LIFE OF ALL NATIVE PEOPLES.

WE ARE A GREAT NATION. WE HAVE ACHIEVED MUCH IN OUR HISTORY. WE HAVE THE CAPACITY AND THE ABILITY TO ACHIEVE NEW BREAKTHROUGHS. WE ARE MATURE ENOUGH TO ENSURE EVERYONE'S RIGHTS ARE PROTECTED. WE CAN GRANT TO THE FIRST INHABITANTS OF THIS COUNTRY THEIR RIGHTS, AND CONTORL OF THEIR CULTURE.

I AM HERE, MR. PRIME MINISTER, TO ENSURE THAT PRINCE EDWARD ISLAND MAKES ITS CONTRIBUTION TO RESOLVING THE DEEPLY HELD CONVICTIONS THAT THE ABORIGINAL GROUPS HAVE PLACED BEFORE US.

ONE OF THE GREATEST PROBLEMS IS THE DIVERSITY OF OPINION ON THE TOPICS WE ARE ADDRESSING, DIFFERENCES AMONG ABORIGINAL GROUPS THEMSELVES, AS WELL AS AMONG THE OTHER PARTICIPANTS.

THIS COMPOUNDS THE PROBLEMS THAT EXIST. MAYBE ONE UNIFORM SOLUTION CAN NOT BE FOUND. SOME SOLUTIONS WILL BE FOUND ON A NATIONAL BASIS, WHILE OTHERS MAY BE ADDRESSED AT A REGIONAL OR PROVINCIAL LEVEL. IT IS VERY IMPORTANT TO HAVE A CLEAR UNDERSTANDING OF THE PROBLEMS WE HAVE BEFORE US BEFORE WE LEAP INTO A SOLUTION THAT MAY NOT BE THE BEST.

THERE ARE OTHER ACTIVITIES THAT WILL HAVE SOME BEARING ON THE TYPE OF PROGRESS WE CAN MAKE AT THIS MEETING, AND IN THIS PROCESS. ONE EXAMPLE IS THE NEW INDIAN ACT (BILL C-31) WHICH IS NOW BEFORE THE HOUSE OF COMMONS. THE ACT WILL RESOLVE MANY QUESTIONS, BUT OTHERS REMAIN TO BE ADDRESSED FOR THE EQUALITY OF ALL ABORIGINAL PEOPLES.

I WOULD SUGGEST THAT MORE PROGRESS CAN BE MADE AT THESE
DISCUSSIONS IF WE CONCENTRATE MORE ON THE MORAL DIMENSION OF THE
DISCUSSIONS, RATHER THAN DWELL ON THE LEGAL COMPLICATIONS.

I DO NOT BELIEVE WE WILL BE ABLE TO EXTRACT ASSURANCES ON ALL
THE DETAIL THAT WE WOULD LIKE, BUT WE CAN ESTABLISH A FRAMEWORK
BY WHICH GREATER SUCCESS CAN BE ACHIEVED OVER THE NEXT FEW
YEARS. WHETHER A CONSTITUTIONAL ENTRENCHMENT OF THE PROCESS, OR
A POLITICAL ACCORD WILL ENHANCE THE DIRECTION OF OUR DISCUSSIONS
WILL BE DETERMINED BY THE APPROACH OF THOSE TAKING PART IN THIS
CONFERENCE.

During the past year, my Minister, the Honourable

MR. Driscoll, has been meeting with the Native Council of Prince

Edward Island to determine their visions and aspirations as

Native People. I, as well, have had meetings with them and now

Have greater insight into their definition of self-government.

To me, it is more like self-determination. A determination to

control their own destiny within the Canadian Confederation, and

Not a third level or order of Government. Part of their

objective is to remove some of the Bureaucracy from their lives

and establish the dignity that will enable them to be productive

members of the Canadian society and have a quality of life that

many do not now enjoy. Discussions always lead to greater

understanding, and we must be careful not to place our own

Definitions on the terms of others.

FOR EXAMPLE, IN OUR DISCUSSIONS WITH OUR NATIVE COUNCIL WE RECOGNIZE A DETERMINATION BY ITS' MEMBERS TO HAVE MORE CONTROL OVER SOCIAL, ECONOMIC, AND EDUCATIONAL PROGRAMS AND POLICIES THAT AFFECT THEM. WE BELIEVE WE CAN MAKE PROGRESS IN THESE AREAS, AND WE ARE COMMITTED TO SEE THAT PROGRESS TAKE PLACE.

THESE, OF COURSE, ARE ONLY A FEW OF THE ISSUES BUT THEY ARE EXAMPLES OF SOME OF THE LESS CONTENTIOUS AREAS WHERE WE SHOULD MAKE PROGRESS.

THE MORE FUNDAMENTAL ISSUES OF COURSE ARE THE DEFINITION AND ENTRENCHMENT OF CERTAIN RIGHTS. AS YOU WILL RECALL AT THE LAST CONFERENCE WE WERE NOT WILLING TO AGREE TO ENTRENCHMENT OF SELF-GOVERNMENT IN THE CONSTITUTION UNTIL MORE DETAILS WERE MADE CLEAR. IN THE PAST YEAR, WHILE NOT ALL THE QUESTIONS HAVE BEEN ANSWERED, WE BELIEVE THAT PROGRESS HAVE BEEN MADE, AND WE ARE NOW PREPARED TO SUPPORT THE ENTRENCHMENT OF THE PRINCIPLE OF SELF-GOVERNMENT ALONG THE LINES OF THE FEDERAL PROPOSAL. I MUST ALSO POINT OUT OUR 1984 POSITION, THAT WE REJECT THE CONCEPT OF A SOVEREIGN THIRD LEVEL OF GOVERNMENT.

THE STRUCTURE OF SELF-GOVERNMENT WOULD NO DOUBT BE

DIFFERENT FOR THE SPECIFIC ABORIGINAL GROUPS AND THE DIFFERENT

REGIONS OF THIS COUNTRY. YET SUCH STRUCTURES WOULD ENABLE

ABORIGINAL PEOPLES TO PROTECT THEIR CULTURES AND TRADITIONS, AND

TO DEVELOP BETTER SOCIAL AND ECONOMIC CONDITIONS FOR THEIR

PEOPLE.

AS A PROVINCE, WE ARE WILLING TO PROMOTE SELF-DETERMINATION FOR ABORIGINAL PEOPLE, AS FAR AS IS POSSIBLE WITHIN THE FRAMEWORK OF THE CANADIAN CONFEDERATION. WE WANT TO SEE THE NATIVE PEOPLE OF CANADA HAVE A GREATER SAY IN THEIR FUTURE, ACCEPT A GREATER RESPONSIBILITY FOR THEIR FUTURE. THE RESULT OF SUCH CO-OPERATION WILL BE A BETTER CANADA, AND A GREATER FUTURE

IN ADDITION TO THE SELF-GOVERNMENT ISSUE, WE BELIEVE THE SEXUAL EQUALITY ISSUE IS IMPORTANT.

I HAVE OBSERVED TE ABORIGINAL GROUPS AND INDIVIDUALS

EXPOUND ON HOW IMPORTANT IT IS TO CHANGE THE CONSTITUTION TO

ENSURE THE RIGHTS OF NATIVE WOMEN. IT WOULD SEEM TO ME THAT

SUCH A FUNDAMENTAL ISSUE SHOULD BE ADDRESSED. IT CAN BE ARGUED

THAT EXISTING CLAUSES IN THE CANADIAN CHARTER OF RIGHTS ARE

ADEQUATE TO GUARANTEE SEXUAL EQUALITY, BUT IF THE FEAR REMAINS,

WE SHOULD REMOVE IT.

PRINCE EDWARD ISLAND IS PREPARED TO AGREE TO THE FEDERAL PROPOSAL OF AMENDING SECTION 35(4) OR EVEN AMENDMENTS TO SECTIONS 25 OR 28 IF THAT WILL ACCOMPLISH THE TASK.

PRINCE EDWARD ISLAND SEES THIS CONSTITUTIONAL PROCESS AS ONE THAT IS INCUMBENT UPON ALL GOVERNMENTS AND THE ABORIGINAL PEOPLES THEMSELVES TO BE REALISTIC IN ANY FUTURE NEGOTIATIONS, SO THAT ALL OF US HAVE THE COMPLEMENTARY OBJECTIVE OF MAKING THIS COUNTRY A BETTER PLACE TO LIVE FOR ALL OF US.



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TRADUCTION DU SECRETARIAT

CONFERENCE DES PREMIERS MINISTRES
SUR

LES QUESTIONS CONSTITUTIONNELLES
INTÉRESSANT LES AUTOCHTONES

## ALLOCUTION D'OUVERTURE

DE

L'HONORABLE JAMES M. LEE

ÎLE-DU-PRINCE-ÉDOUARD





M. LE PREMIER MINISTRE, MES CHERS COLLÈGUES, MESSIEURS LES DIRIGEANTS AUTOCHTONES.

QUOIQUE NOUS COMPTIONS PARMI NOUS AUJOURD'HUI DES NOUVEAUX VENUS, LES QUESTIONS SONT TOUJOURS LES MÊMES.

NOTRE BUT COMMUN EST D'ASSURER UNE PLACE JUSTE ET ÉQUITABLE
AUX AUTOCHTONES DANS LA SOCIÉTÉ CANADIENNE. LES DISCUSSIONS QUE
NOUS AVONS EUES DANS LE PASSÉ ÉTAIENT EXTRÊMEMENT COMPLEXES, ET
ONT ABOUTI, MAIS TRÈS LENTEMENT, À CERTAINS RÉSULTATS. CE QUI NE
VEUT PAS DIRE QUE LA LENTEUR DU PROCESSUS SOIT MAUVAISE EN SOI.
ELLE A PERMIS AUX PREMIERS MINISTRES ET À DE NOMBREUX CANADIENS
D'ACQUÉRIR UNE MEILLEURE COMPRÉHENSION DES PROBLÈMES ET DES
DIFFÉRENCES ENTRE LES RÉGIONS ET LES DIFFÉRENTS GROUPES AUTOCHTONES DE CE GRAND PAYS. IL N'EST PAS DE SOLUTION RAPIDE OU
IDÉALE AUX INÉQUITÉS QUI ONT EXISTÉ DANS LE PASSÉ. MAIS IL Y A
DES SOLUTIONS QUI DOIVENT ÊTRE TROUVÉES, ET QUE NOUS TROUVERONS,
SI NOUS TRAVAILLONS ENSEMBLE, ET SEULEMENT SI NOUS TRAVAILLONS
ENSEMBLE.

JE CROIS QUE NOUS, EN TANT QUE PREMIERS MINISTRES, POUVONS NOUS ÉLEVER AU-DESSUS DE NOS AUTRES PRÉOCCUPATIONS ET FOURNIR LA DIRECTION QUI ABOUTIRA À L'AMÉLIORATION DE LA QUALITÉ DE LA VIE DE TOUS LES AUTOCHTONES.

NOUS AVONS FAIT BEAUCOUP AU COURS DE NOTRE HISTOIRE, ET NOUS
AVONS LA CAPACITÉ DE FAIRE ENCORE BEAUCOUP. NOUS SOMMES ASSEZ
MÛRS POUR FAIRE EN SORTE QUE LES DROITS DE CHACUN SOIENT
PROTÉGÉS. NOUS POUVONS RECONNAÎTRE AUX PREMIERS HABITANTS DE CE
PAYS LEURS DROITS, ET LE CONTRÔLE DE LEUR PROPRE CULTURE.

JE SUIS ICI, M. LE PREMIER MINISTRE, POUR FAIRE EN SORTE QUE
L'ÎLE-DU-PRINCE-ÉDOUARD CONTRIBUE À RÉPONDRE AUX ATTENTES
PROFONDES EXPRIMÉES PAR LES GROUPES AUTOCHTONES.

L'UN DES PRINCIPAUX PROBLÈMES CONSISTE EN LA DIFFÉRENCE
D'OPINIONS EXPRIMÉES SUR LES SUJETS QUE NOUS AVONS À TRAITER,
DIFFÉRENCE ENTRE LES GROUPES AUTOCHTONES EUX-MÊMES, AINSI
QU'ENTRE LES AUTRES PARTICIPANTS. LES PROBLÈMES EXISTANTS S'EN
TROUVENT AGGRAVÉS. PEUT-ÊTRE QU'UNE SOLUTION UNIFORMF NE POURRA
PAS ÊTRE TROUVÉE. CERTAINES SOLUTIONS SERONT TROUVÉES À
L'ÉCHELLE NATIONALE, ALORS QUE CERTAINES AUTRES DEVRONT ÊTRE
CHERCHÉES À L'ÉCHELLE RÉGIONALE OU PROVINCIALE. IL EST TRÈS
IMPORTANT DE COMPRENDRE CLAIREMENT LES PROBLÈMES QUE NOUS AVONS À
RÉSOUDRE AVANT DE SAUTER SUR UNE SOLUTION QUI POURRAIT NE PAS
ÊTRE LA MEILLEURE.

IL Y A D'AUTRES ACTIVITÉS QUI POURRAIENT AVOIR UNE CERTAINE INFLUENCE SUR L'ÉVOLUTION DE CETTE RÉUNION, ET DE CE PROCESSUS.

PAR EXEMPLE, LA NOUVELLE LOI SUR LES INDIENS (PROJET DE LOI C-31)

QUI A ÉTÉ DÉPOSÉE À LA CHAMBRE. CETTE LOI RÉSOUDRA BEAUCOUP DE PROBLÈMES, MAIS IL FAUDRA EN RÉGLER D'AUTRES ENCORE POUR REVENIR À L'ÉGALITÉ DE TOUS LES PEUPLES AUTOCHTONES.

JE ME PERMETS DE DIRE QUE CES DISCUSSIONS ABOUTIRAIENT À DE MEILLEURS RÉSULTATS SI NOUS NOUS CONCENTRIONS DAVANTAGE SUR L'ASPECT MORAL DE LA QUESTION, PLUTÔT QUE DE NOUS PERDRE DANS LE DÉDALE DES QUESTIONS JURIDIQUES.

JE NE CROIS PAS QUE NOUS PUISSIONS NOUS ENTENDRE SUR TOUS
LES DÉTAILS, MAIS NOUS POUVONS ÉTABLIR UN CADRE DE TRAVAIL DANS
LEQUEL NOUS POURRONS OBTENIR DE MEILLEURS RÉSULTATS AU COURS DES
PROCHAINES ANNÉES. LA QUESTION DE SAVOIR SI C'EST L'INSCRIPTION
DU PROCESSUS DANS LA CONSTITUTION, OU UN ACCORD POLITIQUE, QUI
DONNERA LEUR ORIENTATION À NOS DISCUSSIONS, SERA DÉTERMINÉE PAR
LA DÉMARCHE ADOPTÉE PAR LES PARTICIPANTS À CETTE CONFÉRENCE.

AU COURS DE LA DERNIÈRE ANNÉE, MON MINISTRE, L'HONORABLE

M. DRISCOLL, A RENCONTRÉ LE CONSEIL DES AUTOCHTONES DE

L'ÎLE-DU-PRINCE-ÉDOUARD POUR DÉTERMINER QUELLES ÉTAIENT LEURS

CONCEPTIONS ET LEURS ASPIRATIONS EN TANT QU'AUTOCHTONES. JE LES

AI MOI-MÊME RENCONTRÉS ET J'AI MAINTENANT UNE MEILLEURE IDÉE DE

CE QU'ILS ENTENDENT PAR AUTONOMIE POLITIQUE. À MON SENS, LA

CHOSE SE RAPPROCHE DE L'AUTODÉTERMINATION. IL S'AGIT DU

CONTRÔLE, PAR LES INDIENS, DE LEUR PROPRE DESTIN AU SEIN DE LA

CONFÉDÉRATION CANADIENNE, ET NON D'UN TROISIÈME PALIER OU TYPE DE GOUVERNEMENT. ILS VEULENT ENTRE AUTRES "DÉBUREAUCRATISER" LEUR VIE ET ATTEINDRE LA DIGNITÉ QUI LEUR PERMETTRA D'ÊTRE DES MEMBRES PRODUCTIFS DE LA SOCIÉTÉ CANADIENNE ET D'OBTENIR UNE QUALITÉ DE VIE DONT ILS NE JOUISSENT PAS TOUS. LES DISCUSSIONS CONDUISENT TOUJOURS À UNE MEILLEURE COMPRÉHENSION, ET NOUS DEVONS NOUS RAPPELER QUE LES AUTRES NE DONNENT PAS TOUJOURS AUX MOTS LE MÊME SENS QUE NOUS.

PAR EXEMPLE, LORS DE NOS DISCUSSIONS AVEC NOTRE CONSEIL DES AUTOCHTONES, NOUS AVONS RECONNU LE BIEN-FONDÉ DE LA DÉTERMINATION DE SES MEMBRES À EXERCER DAVANTAGE DE CONTRÔLE SUR LES POLITIQUES ET PROGRAMMES SOCIAUX, ÉCONOMIQUES ET ÉDUCATIFS QUI LES TOUCHENT.

NOUS CROYONS QUE NOUS POUVONS ABOUTIR À DES RÉSULTATS DANS CE
DOMAINE, ET NOUS AVONS LA FERME INTENTION D'Y ARRIVER.

BIEN SÛR, CE NE SONT LÀ QUE QUELQUES-UNS DES PROBLÈMES, MAIS
CE SONT DES EXEMPLES DE QUELQUES DOMAINES MOINS LITIGIEUX DANS
LESQUELS NOUS DEVRIONS PROGRESSER.

LA QUESTION LA PLUS FONDAMENTALE EST, BIEN SÛR, CELLE DE LA DÉFINITION ET DE L'INSCRIPTION DANS LA CONSTITUTION DE CERTAINS DROITS. VOUS VOUS SOUVIENDREZ QUE, LORS DE LA DERNIÈRE CONFÉRENCE, NOUS AVIONS DÉCIDÉ DE NE PAS ACCEPTER LE PRINCIPE DE

L'INSCRIPTION DE L'AUTONOMIE POLITIQUE DANS LA CONSTITUTION TANT QUE CERTAINS DÉTAILS NE SERAIENT PAS ÉCLAIRCIS. AU COURS DE LA DERNIÈRE ANNÉE, NOUS CROYONS QUE CERTAINS PROGRÈS ONT ÉTÉ RÉALISÉS, BIEN QU'ILS N'AIT PAS ÉTÉ RÉPONDU À TOUTES LES QUESTIONS, ET NOUS SOMMES MAINTENANT DISPOSÉS À SOUTENIR L'INSCRIPTION DU PRINCIPE DE L'AUTONOMIE POLITIQUE DANS LA LIGNE DE LA PROPOSITION FÉDÉRALE. JE DOIS ÉGALEMENT RAPPELER NOTRE POSITION DE 1984, À SAVOIR QUE NOUS REJETONS L'IDÉE D'UN TROISIÈME PALIER DE GOUVERNEMENT SOUVERAIN.

LA STRUCTURE DE L'AUTONOMIE POLITIQUE VARIERAIT SANS DOUTE SELON LES GROUPES AUTOCHTONES ET D'UNE RÉGION À L'AUTRE DU PAYS.

POURTANT, DE TELLES STRUCTURES PERMETTRAIENT AUX AUTOCHTONES DE PROTÈGER LEURS CULTURES ET LEURS TRADITIONS, ET DE PARVENIR À DE MEILLEURES CONDITIONS DE VIE SOCIALE ET ÉCONOMIQUE POUR LEURS MEMBRES.

EN TANT QUE PROVINCE, NOUS DÉSIRONS PROMOUVOIR L'AUTONOMIE
ADMINISTRATIVE DES AUTOCHTONES AUTANT QUE LE PERMET LE CADRE DE
LA CONFÉDÉRATION CANADIENNE. NOUS VOULONS QUE LES AUTOCHTONES DU
CANADA AIENT DAVANTAGE LEUR MOT À DIRE DANS LE FUTUR, ET
DEVIENNENT PLUS RESPONSABLES DE LEUR AVENIR. LE RÉSULTAT D'UNE
TELLE COOPÉRATION SERA UN CANADA PLUS GRAND ET UN MEILLEUR AVENIR
POUR NOUS TOUS.

EN PLUS DE LA QUESTION DE L'AUTONOMIE POLITIQUE, NOUS
CROYONS QUE CELLE DE L'EGALITÉ ENTRE LES SEXES EST IMPORTANTE.

J'AI ENTENDU DES GROUPES ET INDIVIDUS AUTOCHTONES EXPLIQUER
COMBIEN IL EST IMPORTANT DE MODIFIER LA CONSTITUTION POUR
GARANTIR LES DROITS DES FEMMES AUTOCHTONES. IL ME SEMBLE QU'UNE
QUESTION AUSSI FONDAMENTALE DEVRAIT ÊTRE TRAITÉE. ON POURRAIT
PRÉTENDRE QUE LES CLAUSES DE LA CHARTE CANADIENNE DES DROITS ET
LIBERTÉS SUFFISENT POUR GARANTIR L'ÉGALITÉ ENTRE LES SEXES, MAIS
SI UN DOUTE SUBSISTE, NOUS DEVRIONS LE LEVER.

L'ÎLE-DU-PRINCE-ÉDOUARD EST DISPOSÉE À ACCEPTER LA PROPO-SITION FÉDÉRALE DE MODIFIER LE PARAGRAPHE 35(4), OU MÊME LES ARTICLES 25 OU 28, SI UNE TELLE MODIFICATION PEUT PERMETTRE D'ATTEINDRE CE BUT.

L'ÎLE-DU-PRINCE-ÉDOUARD ESTIME QUE LE PROCESSUS

CONSTITUTIONNEL ENJOINT À TOUS LES GOUVERNEMENTS ET AUX

AUTOCHTONES EUX-MÊMES D'ÊTRE RÉALISTES AU COURS DES NÉGOCIATIONS

FUTURES, DE FAÇON QUE NOUS AYONS TOUS L'OBJECTIF COMPLÉMENTAIRE

DE FAIRE DE CE PAYS UN ENDROIT PLUS AGRÉABLE POUR TOUS.

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FIRST MINISTERS' CONFERENCE
ON
ABORIGINAL CONSTITUTIONAL MATTERS

Opening Remarks by the
Hon. John. M. Buchanan, Premier
of Nova Scotia



OTTAWA, Ontario April 2 and 3, 1985



Prime Minister, we want to say at the outset that we welcome your personal chairmanship to this conference. As a province from which you launched your electoral career, Nova Scotia has a particular interest in your leadership. We have listened with careful and appreciative interest to your opening statement, which we found most impressive, very sincere, logical and a mix of understanding and fairness. We have also listened with close interest to the responses that we have just heard from the representatives of the Aboriginal Peoples.

Prime Minister, in each of the First Ministers' Conferences on Aboriginal constitutional matters, as my Ministers and officials have done at intermediate meetings, I have stated Nova Scotia's commitment that the Aboriginal Peoples within our province, and throughout Canada, should be supported and assisted with the development of significantly increased authority and responsibility for their own internal affairs. Because we are discussing amending the Constitution of Canada, we have to this point been reluctant to use the words ''self-government'' until there is a much greater measure of shared understanding of the words for inclusion in the supreme law of Canada and within the context of the Canadian federation.

Mr. Prime Minister, the draft federal proposal placed before us at this conference would put the words into the Constitution now, the principle into the Constitution now, to be defined by agreement in subsequent negotiations. We recognize that elements which Aboriginal representatives have from time to time asked for, such as sovereignty, land base, exemption from taxation by non-Aboriginal governments, paramountcy of their laws, guaranteed legislative representation would not be at this time included in the Constitution but could be taken up in subsequent negotiations directed toward concluding agreements relating to self-government.

Mr. Prime Minister, as we all know, a Constitution is never easily achieved, nor easily changed - that is how it should be. In the traditional Canadian way, we seek understanding and compromise for the benefit of all who share this great country and there is no question that our Aboriginal Peoples deserve to be in a position to lead a good and prosperous life in Canada, which after all is their country, their Canada. Over the past number of years, Mr. Prime Minister, the officials from Nova Scotia, our Ministers and myself, have expressed concerns and I want to point out to you, sir, that some of those basic concerns have now been addressed by your proposal which has been placed before us today.

Prime Minister, we are here to listen, to communicate, to discuss and to give full weight to all opinions so that at the end of this two-day conference, all parties may say real progress has been made. Nova Scotia and Nova Scotians have long been knownfor our fairness, equity, a sense of justice and rightness, and our understanding. And I want to tell you, sir, that those qualities will not be missing for myself and the members of our delegation over the next two days. Thank you.

THE CHAIRMAN: I thank you Mr. Premier. As a former member for Central Nova with great pride I listened to your remarks and I thank you, sir, for them.

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TRADUCTION DU SECRETARIAT

CONFÉRENCE DES PREMIERS MINISTRES
SUR
LES QUESTIONS CONSTITUTIONNELLES
INTÉRESSANT LES AUTOCHTONES

Allocution d'ouverture

de l'honorable John M. Buchanan

Premier ministre de la

Nouvelle-Ecosse



OTTAWA (Ontario)
Le 2 avril 1985

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Monsieur le Premier ministre, permettez-nous de vous dire en commençant que nous sommes heureux de vous voir présider cette conférence. En tant que province où a été lancée votre carrière électorale, la Nouvelle-Écosse a des motifs particuliers de s'intéresser à votre leadership. C'est avec beaucoup d'attention et de satisfaction que nous avons écouté votre allocution d'ouverture dont le ton de grande sincérité, le caractère logique et un certain mélange de compréhension et d'équité nous a beaucoup frappés. Nous avons également écouté avec beaucoup d'intérêt les réponses que viennent tout juste de faire les représentants des peuples autochtones.

A chacune des Conférences des Premiers ministres sur les questions constitutionnelles intéressant les autochtones, j'ai déclaré, comme l'ont fait mes ministres et mes fonctionnaires à l'occasion des rencontres préparatoires, que la Nouvelle-Écosse croit fermement que les autochtones de notre province et de toutes les régions du Canada devraient recevoir l'appui et l'aide dont ils ont besoin pour s'assurer des pouvoirs considérablement accrus et être en mesure de se charger de leurs propres affaires. Parce qu'il est question de modifier la Constitution du Canada, nous avons hésité jusqu'ici à utiliser l'expression "autonomie gouvernementale" tant que nous ne serons pas parvenus à nous entendre davantage sur la signification à lui donner si elle était incluse dans la loi suprême du Canada et intégrée dans le contexte de la fédération canadienne.

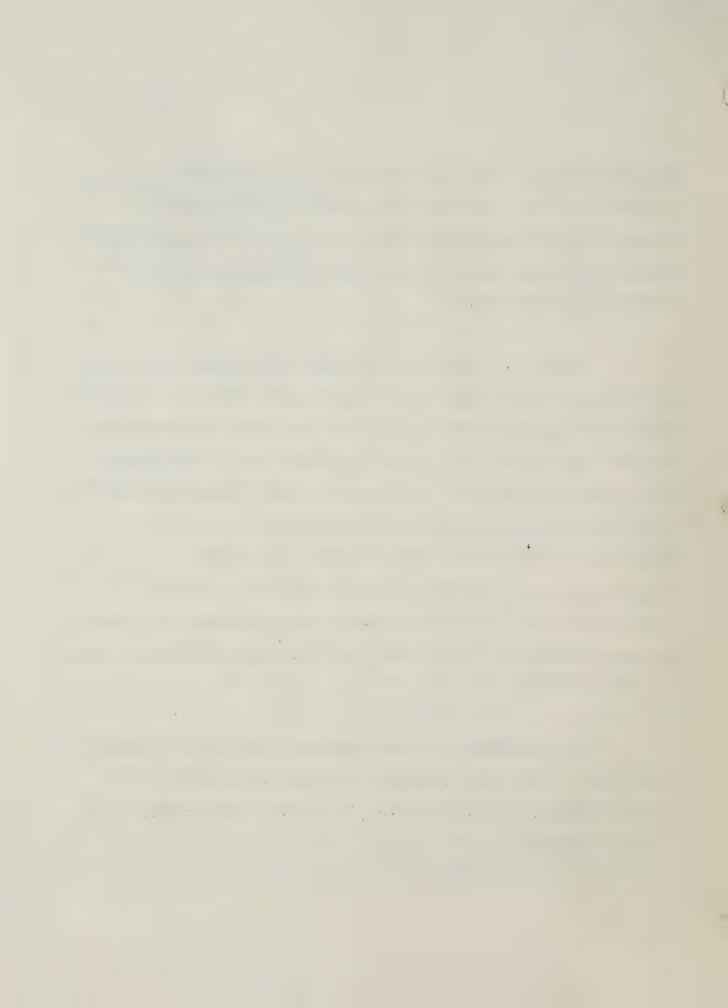
Monsieur le Premier ministre, selon l'avant-projet que le gouvernement fédéral nous a soumis au cours de la présente Conférence, l'expression serait enchâssée dès maintenant dans la Constitution, le principe y serait posé, quitte à être défini par la voie d'une entente conclue lors de négociations ultérieures. Nous voyons que certaines des revendications présentées à un moment ou à un autre par les représentants autochtones, par exemple la souveraineté, la suprématie de leurs lois, l'assise territoriale, l'exemption des impôts fixés par les gouvernements non autochtones et une représentation législative garantie, ne seraient pas inscrites dans la Constitution pour l'instant, mais pourraient faire l'objet de nouvelles discussions à l'occasion de négociations ultérieures devant aboutir à des ententes relatives à l'autonomie gouvernementale.

Comme nous le savons tous, Monsieur le Premier ministre, il n'est jamais facile de créer une constitution, ni de la modifier, et c'est bien ainsi. Comme toujours au Canada, nous tentons d'en arriver à une entente et à un compromis dans l'intérêt de tous les habitants de ce grand pays, et nul doute que nos autochtones méritent de se voir assurer les moyens de mener une vie heureuse et prospère au Canada, qui est, après tout, leur pays, leur Canada. Ces dernières années, Monsieur le

Premier ministre, les fonctionnaires de la Nouvelle-Écosse, nos ministres et moi avons exprimé certaines préoccupations fondamentales; permettez-moi de vous signaler, Monsieur, que la proposition dont vous nous avez saisis aujourd'hui élimine certaines d'entre elles.

Monsieur le Premier ministre, nous sommes réunis ici pour écouter, pour communiquer, pour discuter et pour bien peser toutes les opinions, et ce pour qu'à la fin de cette conférence de deux jours toutes les parties puissent dire: des progrès réels ont été accomplis. La Nouvelle-Ecosse et ses habitants se sont acquis depuis longtemps une réputation d'honnêteté, d'équité, de sens de la justice, de droiture et de compréhension. Je me permets donc de vous dire, Monsieur le Premier ministre, que ces sentiments nous animeront, les membres de notre délégation et moi-même, tout au long de ces deux jours. Je vous remercie.

LE PRÉSIDENT: Je vous remercie Monsieur le Premier ministre. C'est avec beaucoup de fierté qu'en ma qualité d'ancien député de Central Nova j'ai écouté vos paroles, et je vous en remercie.



**DOCUMENT:** 800-20/035

CA1 Z 2 -C 52

FIRST MINISTERS' CONFERENCE
ON
ABORIGINAL CONSTITUTIONAL MATTERS



BRITISH COLUMBIA PROPOSAL



#### BRITISH COLUMBIA PROPOSAL

- 1. The Constitution Act, 1982, is amended by adding thereto, immediately after section 35 thereof, the following sections:
- 35.01 The aboriginal peoples of Canada are entitled to rights of self-government, within the context of the sovereign authority of the Parliament of Canada and the Legislatures of provinces now provided for in the Constitution of Canada, that are set out in agreements in accordance with section 35.02.
- 35.02 For the purposes of S.35.01 agreements that are concluded with representatives of the aboriginal people shall
- (a) be appropriate to the particular circumstances of those people, and
- (b) include a declaration to the effect that 35.01 applies to those rights and require approval by an Act of Parliament and Acts of the Legislatures of any province or the Yukon Territory and the Northwest Territories in which those aboriginal people live.
- 2. Section 61 of the said Act is repealed and the following substituted therefore:
- 61. A reference to the Constitution Act, 1982, of a reference to the Constitution Acts 1867 to 1982, shall be deemed to include a reference to any amendments thereto.
- 3. This amendment may be cited as the Constitution Amendment, year of proclamation (Aboriginal peoples of Canada).



CA1 Z 2 -C 52 DOCUMENT : 800-20/035

Traduction du Secrétariat

CONFÉRENCE DES PREMIERS MINISTRES
SUR
LES QUESTIONS CONSTITUTIONNELLES
INTÉRESSANT LES AUTOCHTONES

### PROPOSITION DE LA COLOMBIE-BRITANNIQUE



OTTAWA (Ontario)
Les 2 et 3 avril 1985



# PROPOSITION DE LA COLOMBIE-BRITANNIQUE

- 1. La Loi constitutionnelle de 1982 est modifiée par l'adjonction, après l'article 35, de ce qui suit :
- 35.01 Le Parlement du Canada et les législatures des provinces exerçant l'autorité souveraine conformément à la Constitution actuelle du Canada, les peuples autochtones du Canada possèdent les droits à l'autonomie gouvernementale prévus par tout accord conclu aux termes de l'article 35.02.
- 35.02 Pour l'application du paragraphe 35.01, les accords conclus avec les représentants des peuples autochtones doivent
- a) correspondre à la situation particulière de ceux-ci, et
- b) comporter une déclaration faisant état de l'application de l'article 35.01 à ces droits et être approuvés par une loi fédérale et une loi de chaque province ou territoire où vivent ces autochtones.
- 2. L'article 61 de ladite loi est abrogé et remplacé par ce qui suit :
- 61. Toute mention de la Loi constitutionnelle de 1982 ou des Lois constitutionnelles de 1867 à 1982 est réputée constituer également une mention de toute modification qui y est apportée.
- 3. Titre de la présente modification : Modification constitutionnelle de (année de la proclamation) (peuples autochtones du Canada).



DOCUMENT: 800-20/041

FIRST MINISTERS' CONFERENCE
ON
ABORIGINAL CONSTITUTIONAL MATTERS

PROPOSED 1985 ACCORD

RELATING TO THE

ABORIGINAL PEOPLES OF CANADA

Federal



OTTAWA, Ontario April 2 and 3, 1985



# PROPOSED 1985 ACCORD RELATING TO THE ABORIGINAL PEOPLES OF CANADA

WHEREAS the aboriginal peoples of Canada, being descendants of the first inhabitants of Canada, are unique peoples in Canada enjoying the rights that flow from their status as aboriginal peoples, from treaties and from land claims agreements, as well as rights flowing from Canadian citizenship, and it is fitting that

- (a) there be protection of rights of aboriginal peoples in the Constitution of Canada,
- (b) they have the opportunity to have self-government arrangements to meet their special circumstances as well as the opportunity to exercise their full rights as citizens of Canada and residents of the provinces and territories, and
- (c) they have the freedom to live in accordance with their own cultural heritage and to use and maintain their distinct languages;

AND WHEREAS, pursuant to section 37.1 of the Constitution Act, 1982, a constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces was held on April 2 and 3, 1985, to which representatives of the aboriginal peoples of Canada and elected representatives of the governments of the Yukon Territory and the Northwest Territories were invited;

AND WHEREAS it was agreed by the government of Canada and the provincial governments, with the support of representatives of the aboriginal peoples of Canada and elected representatives of the governments of the Yukon Territory and the Northwest Territories, that

(a) the Constitution of Canada should be amended to recognize and affirm the rights of the aboriginal peoples of Canada to self-government within the Canadian federation, where those rights are set out in negotiated agreements,

- (b) the Constitution of Canada should be further amended to clarify the provisions relating to equality rights for aboriginal men and women,
- (c) direction should be provided for the continuing discussions leading up to the second constitutional conference required by section 37.1 of the Constitution Act, 1982,
- (d) governments and aboriginal peoples would benefit from a greater degree of federal-provincial-territorial cooperation with respect to matters affecting the aboriginal peoples of Canada, including programs and services provided to them, and
- (e) governments and the aboriginal peoples of Canada would benefit from better statistical information relating to the circumstances of aboriginal peoples, which could be achieved most efficiently by means of the proposed 1986 Census of Canada;

NOW THEREFORE the government of Canada and the provincial governments hereby agree as follows:

#### PART I

#### SELF-GOVERNMENT [AND EQUALITY RIGHTS]

- l. The Prime Minister of Canada will lay or cause to be laid before the Senate and House of Commons, and the first ministers of the provinces will lay or cause to be laid before their legislative assemblies, prior to December 31, 1985, a resolution in the form set out in Schedule I to authorize an amendment to the Constitution of Canada to be made by proclamation issued by Her Excellency the Governor General under the Great Seal of Canada.
- 2. The government of Canada and the provincial governments are committed, to the extent that each has authority, to
  - (a) participating in negotiations directed toward concluding, with representatives of aboriginal people living in particular communities or regions, agreements relating to self-government that are appropriate to the particular circumstances of those people;
  - (b) discussing with representatives of aboriginal people from each province the timing, nature and scope of the negotiations referred to in paragraph (a).

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- 3. The government of Canada and the governments of the Yukon Territory and the Northwest Territories are committed to participating in negotiations directed toward concluding, with representatives of aboriginal people living in particular communities or regions, agreements relating to self-government that are appropriate to the particular circumstances of those people, and the minister of the government of Canada responsible for the negotiations shall invite elected representatives of the government of the Yukon Territory or the Northwest Territories to participate in those negotiations where, after consultation with representatives of the aboriginal peoples of Canada from the Yukon Territory or the Northwest Territories, as the case may be, the minister is of the opinion that those negotiations directly affect the Yukon Territory or the Northwest Territories, as the case may be.
- 4. The objectives of agreements negotiated pursuant to article 2 of this Accord shall be, where appropriate,
  - (a) to allow aboriginal people increased authority over and responsibility for lands that have been or may be reserved or set aside for their use;
  - (b) to ensure increased participation of the aboriginal peoples of Canada in government decision-making that directly affects them;
  - (c) to maintain and enhance the distinct culture and heritage of the aboriginal peoples of Canada; and
  - (d) to recognize the unique position of the aboriginal peoples of Canada.
- 5. The negotiations referred to in article 2 of this Accord may have regard to the following factors:
  - (a) that agreements relating to self-government for aboriginal people may encompass a variety of arrangements based on the particular needs and circumstances of those people, including ethnic-based government, public government, modifications to existing governmental structures to accommodate the unique circumstances of the aboriginal peoples of Canada and management of, and involvement in, the delivery of programs and services;
  - (b) the existence of an identifiable land base for the aboriginal people concerned;
  - (c) aboriginal and treaty rights, or other rights and freedoms, of the aboriginal people concerned;
  - (d) the rights and freedoms of the non-aboriginal people in the communities or regions where the aboriginal people live; and

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- (e) any relationship between the matters being negotiated and land claims agreements that have been, are being or may be negotiated with the aboriginal people concerned.
- 6. The negotiations referred to in article 2 of this Accord may address any appropriate matter relating to self-government including, among other matters,
  - (a) membership in the group of aboriginal people concerned;
  - (b) the nature and powers of the institutions of self-government;
  - (c) responsibilities of, and programs and services to be provided by, the institutions of self-government;
  - (d) the definition of the geographic areas over which the institutions of self-government will have jurisdiction;
  - (e) resources to which the institutions of self-government will have access;
  - (f) fiscal arrangements and other bases of economic support for the institutions of self-government; and
  - (g) distinct rights for the aboriginal people concerned.
- 7. During the period between the date this Accord is signed and the date the constitutional amendment set out in Schedule I comes into force, the government of Canada and the provincial governments, in consultation with representatives of aboriginal people, shall take such measures as may be appropriate to commence the negotiations contemplated in article 2 of this Accord.
- 8. Periodic reports on the negotiations referred to in article 2 of this Accord shall be made to the ministerial meetings referred to in article 10 of this Accord.

#### PART II

#### PREPARATIONS FOR CONSTITUTIONAL CONFERENCE

9. In preparation for the second constitutional conference required by section 37.1 of the Constitution Act, 1982, the government of Canada and the provincial governments shall, with the participation of representatives of the aboriginal peoples of Canada and representatives of the governments of the Yukon Territory and the Northwest Territories, conduct such meetings as are necessary to deal with the items included in the agenda of the constitutional conference held

- 5 on March 15 and 16, 1983 and listed in the 1983 Constitutional Accord on Aboriginal Rights and to deal with the constitutional proposals of the representatives of the aboriginal peoples of Canada. Ministerial meetings, composed of designated ministers of the government of Canada and the 10. provincial governments, representatives of the aboriginal peoples of Canada and elected representatives of the governments of the Yukon Territory and the Northwest Territories, under the chairmanship of a designated minister of the government of Canada, shall be convened at least twice in the twelve month period immediately following the date this Accord is signed, and at least twice in the period between the end of that twelve month period and the date on which the second constitutional conference required by section 37.1 of the Constitutional Act, 1982 is 11. The ministerial meetings referred to in article 10 of this Accord shall issue directions as to work to be undertaken by technical or other working groups and review and assess that work on a periodic basis; receive periodic reports, in accordance with (b) article 8 of this Accord, on the negotiations referred to in that article and consider further constitutional amendments relating to self-government; and seek to reach agreement or consensus on (c) issues to be laid before first ministers at the second constitutional conference required by section 37.1 of the Constitution Act, 1982. PART III SECOND CONSTITUTIONAL CONFERENCE REQUIRED BY SECTION 37.1 OF THE CONSTITUTION ACT, 1982 The second constitutional conference required by 12. section 37.1 of the Constitution Act, 1982 shall have included in its agenda an item relating to self-government for the aboriginal peoples of Canada. PART IV FURTHER UNDERTAKINGS RELATING TO THE ABORIGINAL PEOPLES OF CANADA The government of Canada and the provincial 13. governments, with the participation of the aboriginal peoples of Canada and elected representatives of the governments of the Yukon Territory and the Northwest Territories, further agree on the matters affecting the aboriginal peoples of Canada set out in Schedules II and III.

# PART V

### GENERAL

14. Nothing in this Accord is intended to preclude, or substitute for, any bilateral or other discussions or agreements between governments and the various aboriginal peoples of Canada.

Signed at Ottawa this 3<sup>rd</sup> day of April, 1985 by the government of Canada and the provincial governments:

Fait à Ottawa le 3 avril 1985,

par le gouvernement du Canada

et les gouvernements

provinciaux:

	Canada	
Ontario		British Columbia Colombie-Britannique
Québec		Prince Edward Island Île-du-Prince-Édouard
Nova Scotia Nouvelle-Écosse		Saskatchewan
New Brunswick Nouveau-Brunswick		Alberta
Manitoba		Newfoundland Terre-Neuve
WITH THE PARTICIPATION OF:		AVEC LA PARTICIPATION DES
Assembly of First Nations Assemblée des premières nations	Inuit Committee on National Issues Comité inuit sur les affaires nationales	Métis National Council Ralliement national des Métis
Native Council of Canada Conseil des	Yukon Territory Territoire du Yukon	Northwest Territories Territoires du Nord-Ouest

#### SCHEDULE I

#### RESOLUTION

Motion for a Resolution to authorize an amendment to the Constitution of Canada

WHEREAS the Constitution Act, 1982 provides that an amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by resolutions of the Senate and House of Commons and resolutions of the legislative assemblies as provided for in section 38 thereof;

NOW THEREFORE the (Senate) (House of Commons) (legislative assembly) resolves that an amendment to the Constitution of Canada be authorized to be made by proclamation issued by Her Excellency the Governor General under the Great Seal of Canada in accordance with the schedule hereto.

#### SCHEDULE

### AMENDMENT TO THE CONSTITUTION OF CANADA

[Possible Equality Rights Amendment]

1. The Constitution Act, 1982 is amended by adding thereto, immediately after section 35 thereof, the following section:

Rights to self-government

"35.01 (1) The rights of the aboriginal peoples of Canada to self-government, within the context of the Canadian federation, that are set out in agreements referred to in subsection (2) are hereby recognized and affirmed.

# Agreements

- (2) Subsection (1) applies in respect of any agreement with representatives of aboriginal people that sets out rights of self-government and that
- (a) includes a declaration that subsection (1) applies; and
- (b) is approved by an Act of Parliament and Acts of the legislatures of any provinces in which those aboriginal people live.

Rights not affected

- (3) Nothing in this section abrogates or derogates from any rights to self-government, or any other rights, of the aboriginal peoples of Canada.
- 2. Section 61 of the said Act is repealed and the following substituted therefor:

# Réferences

- "61. A reference to the <u>Constitution Act, 1982</u>, or a reference to the <u>Constitution Acts 1867 to 1982</u>, shall be deemed to include a reference to <u>any amendments thereto."</u>
- 3. This Amendment may be cited as the <u>Constitution</u> Amendment, year of proclamation (Aboriginal peoples of Canada).

#### SCHEDULE II

# FEDERAL-PROVINCIAL-TERRITORIAL COOPERATION ON MATTERS AFFECTING THE ABORIGINAL PEOPLES OF CANADA

- The government of Canada and the provincial and territorial governments are committed to improving the socio-economic conditions of the aboriginal peoples of Canada and to coordinating federal, provincial and territorial programs and services for them.
- 2. In order to achieve the objectives set out in article 1 of this Schedule, the government of Canada and the provincial and territorial governments shall, with the participation of representatives of the aboriginal peoples of Canada, enter into regular discussions, on a bilateral or multilateral basis as appropriate, which shall have the following additional objectives:
  - (a) the determination of the respective roles and responsibilities of the government of Canada and the provincial and territorial governments toward the aboriginal peoples of Canada;
  - (b) the improvement of federal-provincialterritorial cooperation with respect to the provision of programs and services, as well as other government initiatives, to the aboriginal peoples of Canada so as to maximize their effectiveness; and
  - (c) the transfer to institutions of self-government for the aboriginal peoples of Canada, where appropriate, of responsibility for the design and administration of government programs and services.

#### SCHEDULE III

# STATISTICAL DATA RESPECTING THE ABORIGINAL PEOPLES OF CANADA

- 1. It is recognized that the government of Canada, the provincial and territorial governments and representatives of the aboriginal peoples of Canada are in need of improved data relating to the socio-economic situation of the aboriginal peoples of Canada, including the numbers and geographic concentrations of those peoples, so as to facilitate the structuring of initiatives to better meet their social, economic and cultural needs.
- 2. In order to obtain data referred to in article 1 of this Schedule, the government of Canada and the provincial governments, with the participation of representatives of the aboriginal peoples of Canada and representatives of the governments of the Yukon Territory and the Northwest Territories, shall forthwith establish a technical working group for the purpose of developing a proposal to use the 1986 Census of Canada and, if considered necessary, to supplement information taken therefrom, which group shall present its recommendations to the participants no later than the end of May, 1985.
- 3. The proposal referred to in article 2 of this Schedule shall include recommendations for use of and access to the data obtained and for cost-sharing with respect to the implementation of measures to obtain data that are to be taken in addition to measures taken within the existing structure of the 1986 Census of Canada.



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CA1 72 -6.52

> CONFÉRENCE DES PREMIERS MINISTRES SUR LES QUESTIONS CONSTITUTIONNELLES INTÉRESSANT LES AUTOCHTONES

PROJET D'ACCORD DE 1985
CONCERNANT LES PEUPLES AUTOCHTONES DU CANADA



Fédéral

OTTAWA (Ontario) Les 2 et 3 avril 1985



# PROJET D'ACCORD DE 1985 CONCERNANT LES PEUPLES AUTOCHTONES DU CANADA

#### Considérant :

qu'en raison de la spécificité des peuples autochtones du Canada, descendants des premiers habitants du pays, et des droits dont ils jouissent du fait de leur qualité même d'autochtones, des traités et des accords de règlement de leurs revendications territoriales, ainsi que de leur citoyenneté canadienne, il convient :

- (a) que les droits des peuples autochtones soient protégés par la Constitution du Canada,
- (b) qu'ils aient la possibilité de disposer de mécanismes d'autonomie gouvernementale adaptés à leur situation particulière et aussi d'exercer pleinement leurs droits de citoyens du Canada et d'habitants des provinces ou territoires,
- (c) qu'ils soient libres de vivre selon leurs us et coutumes ainsi que de sauvegarder et d'utiliser leurs langues;

qu'il s'est tenu les 2 et 3 avril 1985, en application de l'article 37.1 de la Loi constitutionnelle de 1982, une conférence constitutionnelle, réunissant le premier ministre du Canada et les premiers ministres provinciaux, aux travaux de laquelle les représentants des peuples autochtones du Canada et des représentants élus des gouvernements du territoire du Yukon et des territoires du Nord-Ouest avaient été invités à participer;

que les gouvernements fédéral et provinciaux, avec l'appui des représentants des peuples autochtones du Canada et celui des représentants élus des gouvernements du territoire du Yukon et des territoires du Nord-Ouest, sont convenus :

(a) qu'il y aurait lieu de modifier la Constitution du Canada afin d'y inscrire la reconnaissance et la confirmation des droits des peuples autochtones du Canada à l'autonomie gouvernementale, au sein de la fédération canadienne, dans les cas où ces droits sont prévus dans des accords négociés,

- (b) qu'il y aurait également lieu de modifier la Constitution du Canada afin d'y préciser la garantie d'égalité des droits dont bénéficient les autochtones des deux sexes,
- (c) qu'il y aurait lieu de définir les modalités des discussions qui précéderont la deuxième conférence constitutionnelle prévue par l'article 37.1 de la Loi constitutionnelle de 1982,
- (d) que les gouvernements et les autochtones bénéficieraient de toute amélioration apportée à la collaboration entre le fédéral, les provinces et les territoires à l'égard des questions, et plus spécialement des programmes et des services, intéressant les peuples autochtones du Canada,
- (e) que les gouvernements et les peuples autochtones du Canada bénéficieraient de toute amélioration des renseignements statistiques relatifs aux autochtones, surtout grâce au recensement général prévu pour 1986,

les gouvernements fédéral et provinciaux sont convenus de ce qui suit :

### PARTIE I

# AUTONOMIE GOUVERNEMENTALE ET [ÉGALITÉ DES DROITS]

- 1. Le premier ministre du Canada et les premiers ministres provinciaux déposeront ou feront déposer avant le 31 décembre 1985, devant le Sénat et la Chambre des communes et devant les assemblées législatives respectivement, une résolution, établie en la forme de celle qui figure à l'annexe I, autorisant la modification de la Constitution du Canada par proclamation de Son Excellence le gouverneur général sous le grand sceau du Canada.
- 2. Les gouvernements fédéral et provinciaux s'engagent, dans la mesure de leur compétence respective, à :
  - (a) participer à des négociations en vue de conclure avec les représentants des autochtones vivant au sein de collectivités

ou dans des régions particulières des accords relatifs à l'autonomie gouvernementale qui correspondent à la situation particulière de ceux-ci;

- (b) discuter avec les représentants des autochtones de chacune des provinces du calendrier, de la nature et de la portée de ces négociations.
- 3. Le gouvernement fédéral et les gouvernements du territoire du Yukon et des territoires du Nord-Ouest s'engagent à participer à des négociations en vue de conclure avec les représentants des autochtones vivant au sein de collectivités ou dans des régions particulières des accords relatifs à l'autonomie gouvernementale qui correspondent à la situation particulière de ceux-ci. Le ministre fédéral responsable de ces négociations invite les représentants élus de ces gouvernements à y participer s'il estime, après avoir consulté les représentants des peuples autochtones du Canada de l'un ou l'autre territoire, qu'elles intéressent directement l'un ou l'autre territoire.
- 4. Les accords visés à l'article 2 du présent accord devront avoir au besoin pour objet :
  - (a) d'accroître la compétence des autochtones sur les territoires qui leur ont été affectés et leurs responsabilités à l'égard de ceux-ci;
  - (b) de faire participer les peuples autochtones du Canada de plus près au processus de prise de décisions gouvernementales qui les touchent directement;
  - (c) de promouvoir le maintien et la valorisation du patrimoine culturel des peuples autochtones du Canada;
  - (d) de reconnaître la place particulière des peuples autochtones du Canada.
- 5. Dans les négociations prévues à l'article 2 du présent accord, il peut être tenu compte des éléments suivants :
  - (a) le fait que les accords relatifs à l'autonomie gouvernementale des autochtones peuvent comporter divers accords fondés sur les besoins et la situation propres de ces derniers, en ce qui concerne notamment les gouvernements à caractère ethnique ou public, les modifications à apporter aux structures gouvernementales existantes pour les adapter

à la situation particulière des peuples autochtones du Canada, ou la prise en charge des programmes et services et la participation à leur mise en oeuvre ou à leur prestation;

- (b) le fait que les autochtones concernés disposent d'une assise territoriale définissable;
- (c) les droits et libertés -- notamment ancestraux ou issus de traités -- des autochtones concernés;
- (d) les droits et libertés des non-autochtones au sein des collectivités ou des régions où vivent les autochtones;
- (e) les rapports éventuels entre les questions négociées et les accords de règlement des revendications territoriales qui ont fait l'objet de négociations, le font ou peuvent le devenir, avec les autochtones concernés.
- 6. Les négociations prévues à l'article 2 du présent accord pourront porter sur toute question relative à l'autonomie gouvernementale et, notamment, sur :
  - (a) l'appartenance au groupe d'autochtones concernés;
  - (b) la nature et les pouvoirs des institutions gouvernementales;
  - (c) les attributions de ces institutions et la prise en charge par elles de certains programmes et services;
  - (d) la délimitation du territoire relevant de leur compétence;
  - (e) les ressources auxquelles elles auront accès;
  - (f) les arrangements fiscaux et autres dispositions à prendre en vue de leur soutien économique;
  - (g) les droits distincts des autochtones concernés.
- 7. Entre la date de signature du présent accord et celle à laquelle entrera en vigueur la modification constitutionnelle dont le texte figure à l'annexe I, les gouvernements fédéral et provinciaux, en consultation avec les représentants des autochtones, prendront toutes mesures éventuellement indiquées pour engager les négociations visées à l'article 2 du présent accord.
- 8. Le groupe visé à l'article 10 du présent accord sera régulièrement informé des négociations visées à l'article 2 du présent accord.

#### PARTIE II

#### PRÉPARATIFS DE LA PROCHAINE CONFÉRENCE CONSTITUTIONNELLE

- 9. Afin de préparer la deuxième conférence constitutionnelle prévue par l'article 37.1 de la Loi constitutionnelle de 1982, les gouvernements fédéral et provinciaux organiseront les réunions qu'exigeront d'une part la discussion des questions inscrites à l'ordre du jour de la conférence constitutionnelle des 15 et 16 mars 1983 et figurant dans l'Accord constitutionnel de 1983 sur les droits des autochtones, d'autre part l'étude des mesures constitutionnelles proposées par les représentants des peuples autochtones du Canada, étant entendu que des représentants des gouvernements du territoire du Yukon et des territoires du Nord-Ouest ainsi que les représentants des peuples autochtones du Canada participeront aux réunions en question.
- 10. Un groupe constitué de ministres fédéraux et provinciaux, de représentants des peuples autochtones du Canada et de représentants élus des gouvernements du territoire du Yukon et des territoires du Nord-Ouest se réunira au moins deux fois dans les douze mois suivant la date de signature du présent accord, et au moins deux autres fois entre l'expiration de cette période et la date de la deuxième conférence constitutionnelle prévue par l'article 37.1 de la Loi constitutionnelle de 1982. Les réunions en question seront présidées par le ministre fédéral désigné à cet effet.
- 11. Le groupe visé à l'article 10 du présent accord aura pour mission :
  - (a) de déterminer les tâches que devront accomplir notamment les équipes de spécialistes qui auront été constituées, ainsi que d'analyser périodiquement le travail effectué par celles-ci;
  - (b) de recevoir, conformément à l'article 8 du présent accord, les rapports sur les négociations en cause et d'étudier tout projet de modification constitutionnelle qui peut en résulter.
  - (c) de tenter d'en arriver à un accord ou à une convergence de vues sur les questions qu'il convient d'inscrire à l'ordre du jour de la deuxième conférence constitutionnelle prévue par l'article 37.1 de la Loi constitutionnelle de 1982;

#### PARTIE III

DEUXIÈME CONFÉRENCE CONSTITUTIONNELLE PRÉVUE À L'ARTICLE 37.1 DE LA LOI CONSTITUTIONNELLE DE 1982

12. La deuxième conférence constitutionnelle prévue à l'article 37.1 de la Loi constitutionnelle de 1982 verra inscrit à son ordre du jour un point relatif à l'autonomie gouvernementale des peuples autochtones du Canada.

#### PARTIE IV

### AUTRES ENGAGEMENTS À L'ÉGARD DES PEUPLES AUTOCHTONES DU CANADA

13. Les gouvernements fédéral et provinciaux, avec la participation des peuples autochtones du Canada et des représentants élus du gouvernement du territoire du Yukon et des territoires du Nord-Ouest, sont également d'accord sur les questions touchant ces peuples énumérées aux annexes II et III.

#### PARTIE V

#### DISPOSITIONS GÉNÉRALES

14. Le présent accord n'a pas pour effet d'empêcher ou de remplacer les discussions, bilatérales ou autres, ou la conclusion d'accords, entre les gouvernements et les divers peuples autochtones du Canada.

Signed at Ottawa this 3<sup>rd</sup> day of April, 1985 by the government of Canada and the provincial governments:

Fait à Ottawa le 3 avril 1985, par le gouvernement du Canada et les gouvernements provinciaux:

Can	ada
Ontario	British Columbia Colombie-Britannique
Québec	Prince Edward Island Île-du-Prince-Édouard
Nova Scotia Nouvelle-Écosse	Saskatchewan
New Brunswick Nouveau-Brunswick	Alberta
Manitoba	Newfoundland Terre-Neuve
WITH THE PARTICIPATION OF:	AVEC LA PARTICIPATION DES:

Assembly of First Nations Assemblée des premières nations Inuit Committee on National Issues Comité inuit sur les affaires nationales Métis National Council Ralliement national des Métis

Native Council of Canada Conseil des autochtones du Canada Yukon Territory Territoire du Yukon

Northwest Territories Territoires du Nord-Ouest

#### ANNEXE I

#### RÉSOLUTION

Motion de résolution autorisant la modification de la Constitution du Canada

Considérant que la Loi constitutionnelle de 1982 prévoit que la Constitution du Canada peut être modifiée par proclamation du gouverneur général sous le grand sceau du Canada, autorisée à la fois par des résolutions du Sénat et de la Chambre des communes et par des résolutions des assemblées législatives dans les conditions prévues à l'article 38,

(le Sénat) (la Chambre des communes) (l'assemblée législative de) a résolu d'autoriser la modification de la Constitution du Canada par proclamation de Son Excellence le gouverneur général sous le grand sceau du Canada, en conformité avec l'annexe ci-jointe.

#### ANNEXE

#### MODIFICATION DE LA CONSTITUTION DU CANADA

[Modification éventuelle des droits à l'égalité]

1. La Loi constitutionnelle de 1982 est modifiée par insertion, après l'article 35, de ce qui suit:

Droits à l'autonomie gouvernementale

35.01 (1) Sont reconnus et confirmés les droits des peuples autochtones du Canada à l'autonomie gouvernementale au sein de la fédération canadienne prévus par tout accord visé au paragraphe (2).

#### Accords

- (2) Le paragraphe (1) s'applique aux accords portant sur les droits à l'autonomie gouvernementale avec des représentants des peuples autochtones qui, à la fois:
- (a) comportent une déclaration où il est fait état de l'application de ce paragraphe (1);
- (b) sont approuvés par une loi fédérale et une loi de la législature de chaque province où vivent ces autochtones.

#### Protection des droits

- (3) Le présent article n'a pas pour effet de porter atteinte aux droits à l'autonomie gouvernementale ou autres qu'ont les peuples autochtones du Canada.
- 2. L'article 61 de la même loi est abrogé et remplacé par ce qui suit:

#### Mentions

- "61. Toute mention de la Loi constitutionnelle de 1982 ou des Lois constitutionnelles de 1867 à 1982 est réputée constituer également une mention de toute modification qui y est apportée."
- 3. Titre de la présente modification: Modification constitutionnelle de année de la proclamation (peuples autochtones du Canada).

#### ANNEXE: II

COLLABORATION FÉDÉRALE-PROVINCIALE-TERRITORIALE À L'ÉGARD DES QUESTIONS INTÉRESSANT LES PEUPLES AUTOCHTONES DU CANADA

- 1. Les gouvernements fédéral, provinciaux et territoriaux s'engagent à veiller au mieux-être socio-économique des peuples autochtones du Canada et à coordonner les programmes et services fédéraux, provinciaux ou territoriaux qui leur sont destinés.
- Pour réaliser ces objectifs, les gouvernements fédéral, provinciaux et territoriaux auront régulièrement, avec la participation des représentants des peuples autochtones du Canada, des discussions bilatérales ou multilatérales, selon le cas, qui viseront:
  - (a) à déterminer leurs mandats et obligations respectifs à l'égard des peuples autochtones du Canada;
  - (b) à améliorer leur collaboration en ce qui concerne les interventions de l'État touchant directement les peuples autochtones du Canada, et notamment les programmes et services, de manière que ces interventions soient aussi efficaces que possible;
  - (c) à confier aux institutions gouvernementales des peuples autochtones du Canada, lorsqu'il y a lieu, le soin de concevoir et de mettre en oeuvre les programmes, ou de dispenser les services, publics.

#### ANNEXE III

#### STATISTIQUES SUR LES PEUPLES AUTOCHTONES DU CANADA

- 1. Les gouvernements fédéral et provinciaux, les gouvernements des territoires et les représentants des peuples autochtones du Canada ont besoin de meilleures données socio-économiques au sujet de ces peuples, et plus spécialement en matière démographique, afin de pouvoir plus facilement adapter leur action aux besoins sociaux, économiques et culturels de ces peuples.
- 2. En conséquence, les gouvernements fédéral et provinciaux, avec la participation des représentants des peuples autochtones du Canada et de ceux des gouvernements du territoire du Yukon et des territoires du Nord-Ouest, constitueront immédiatement un groupe de travail chargé de définir la façon dont les informations provenant du recensement national de 1986 pourraient être exploitées pour réaliser l'objectif susmentionné et, si nécessaire, de prévoir les renseignements supplémentaires utiles; ce groupe présentera ses recommandations aux participants au plus tard à la fin de mai 1985.
- 3. La solution que le groupe de travail prévu à l'article 2 de la présente annexe amènera à proposer comportera des recommandations sur la consultation et l'exploitation des données obtenues et sur les modalités suivant lesquelles seront partagés les frais d'application des mesures de prise de données qui s'ajouteront au recensement de 1986 proprement dit.



DOCUMENT: 800-20/042

FIRST MINISTERS' CONFERENCE
ON
ABORIGINAL CONSTITUTIONAL MATTERS

## STATEMENT OF THE QUEBEC NATIVE WOMEN'S ASSOCIATION

Quebec



OTTAWA, Ontario April 2 and 3, 1985



#### FIRST MINISTERS' CONFERENCE ON ABORIGINAL CONSTITUTIONAL

#### MATTERS

April 2-3, 1985

#### STATEMENT OF THE QUEBEC NATIVE WOMEN'S ASSOCIATION

#### Introduction

We come to this table as representatives of aboriginal peoples to urge this Conference to establish the constitutional framework for a new relationship between aboriginal and non-aboriginal peoples, between aboriginal and non-aboriginal governments. We come to this table to urge recognition of aboriginal self-government involving all persons entitled as aboriginal peoples of Canada to participate in aboriginal self-government.

For too long in this process has the issue of sexual equality been artificially isolated on agendas and in people's minds. Sexual equality is not a separate right but rather the basis upon which all rights should be exercised or applied.

The first recommendation of the Commons

Special Committee on Indian Self-Government in its report

"Indian Self-Government in Canada" released in the Fall of

1983 was that the Federal Government establish a new

relationship with Indian First Nations and that an

essential element of this relationship be recognition of

Indian self-government.

The call for a new relationship continued throughout the Report.

The Committee recognized that the new relationship must be built upon a just and fair foundation. To accomplish this, it was recognized that all people concerned and whose lives would be affected should participate in the establishment of the new relationship.

Thus in its ninth recommendation the Committee stated:

"9. The Committee asserts as a principle that it is the rightful jurisdiction of each Indian First Nation to determine its membership, according to its own particular criteria. The Committee recommends that each Indian First Nation adopt, as a necessary first step to forming a government, a procedure that will ensure that all people belonging to that First Nation have the opportunity of participating in the process of forming a government, without regard to the restrictions of the Indian Act."

(Our emphasis)

We interpret this as a recognition of the right of Indian people entitled to be reinstated to the various Indian Nations to participate in the process of forming a government.

The Committee suggested that the new relationship could be forged through a renewed treaty process, legislative action and, of course, constitutional amendment.

We are here at this Conference to discuss constitutional amendments. We suggest that constitutional discussions on the two substantive issues on the agenda of this Conference, sexual equality and self-government, should contemplate a renewed treaty process which accommodates both the right to sexual equality and the right to self-government.

As an absolute minimum, we urge this Conference to agree upon specific amendments on the following points:

- The Charter must be amended to ensure that it does not, unintentionally, sanction sexual discrimination;
- 2. The right to self-government as an aboriginal and treaty right must be explicitly recognized and a renewed treaty process entrenched.

#### Equality

With respect to comprehensive sexual equality provisions for aboriginal peoples, three (3) types of rights must be covered by substantive equality provisions:

- (i) Part II rights The existing
   aboriginal and treaty rights referred
   to in section 35;
- (ii) Charter rights Those rights specifically referred to in the Canadian Charter of Rights and Freedoms;

#### (iii) All other rights.

In the light of proposals respecting aboriginal self-government currently being considered by this conference - that is its inclusion outside section 35 of Part II, it becomes more important that the guarantee of sexual equality cover all rights of the aboriginal peoples-aboriginal, treaty and other rights and freedoms.

With the addition of sub-section 35(4), the Part II rights are covered by a substantive equality clause.

With respect to the Charter and other rights, section 15, once in force, will provide the substantive guarantee to equality before and under the law. Section 28 guarantees all rights and freedoms referred to in the Charter equally to male and female persons. The remaining problem is possible interpretations of section 25, in particular, whether the "other rights or freedoms that pertain to the aboriginal peoples of Canada" mentioned in section 25 might be excluded from the guarantee of equality.

The proposal put forward by the Assembly of First Nations in a letter to Prime Minister Mulroney dated January 11, 1985 appears to cover these concerns.

The Assembly of First Nations suggests adding to section 25 of the Constitution Act, 1982 a sub-section 25(2) which would read:

"Notwithstanding anything in this Charter, all rights and all freedoms of the aboriginal peoples of Canada are guaranteed equally to male and female aboriginal persons".

As an alternative, we would find acceptable a slightly modified version of a text proposed by the Federal Government for sub-section 25(2) during the 1984 Conference. Such a text might read:

"Nothing in this section shall be construed as to abrograte or derogate from the guarantee of equality with respect to male and female persons under section 28 of this Charter".

#### Self-Government

First, we would propose an addition to section 35 of the Constitution Act which would explicitly recognize the right of the aboriginal peoples of Canada to self-government.

Second, we consider it most important that this Conference agree upon an amendment dealing with implementation of the rights of the aboriginal peoples. This is particularly important in the light of the two year period prior to the next First Ministers' Conference. This time must not be lost. Many aboriginal nations may wish to commence specific and concrete discussions on implementation of their aboriginal or treaty rights.

Conference, a joint proposal was tabled by the Assembly of First Nations, Inuit Committee on National Issues and the Native Council of Canada in the form of a proposed Constitutional Accord on the Rights of Aboriginal Peoples of Canada (document 800-18/046) which included a Schedule setting forth a text for a proposed section 35.2. With the addition of an explicit recognition of the right to self-government in section 35, we would propose a slightly modified version of the text tabled in document 800-18/046. Our proposal for an implementation clause would read:

- "35.2(1). The government of Canada and the provincial governments, to the extent that each has jurisdiction, are committed to negotiating, concluding and implementing treaties with the aboriginal peoples for the specific implementation in the various regions of Canada of the rights of the aboriginal peoples.
- (2). Such treaties shall be treaties within the meaning of section 35(1).
- (3). Subsections (1) and (2) shall apply to First Nations with treaties, only to extent so elected by them."

This text or one substantially similar would entrench the renewed treaty process called for by the Special Committee on Indian Self-Government in Canada.

#### Conclusion

With sexual equality unequivocally guaranteed and the right to self-government explicitly recognized, the aboriginal and non-aboriginal governments of this country may proceed to shape a new relationship based upon mutual trust, equality of the sexes and collective rights.

Section 52 of the <u>Constitution Act</u> refers to the Constitution of Canada as the supreme law of Canada. Let its supremacy operate to guarantee justice and equality in Canada.



DOCUMENT: 800-20/042

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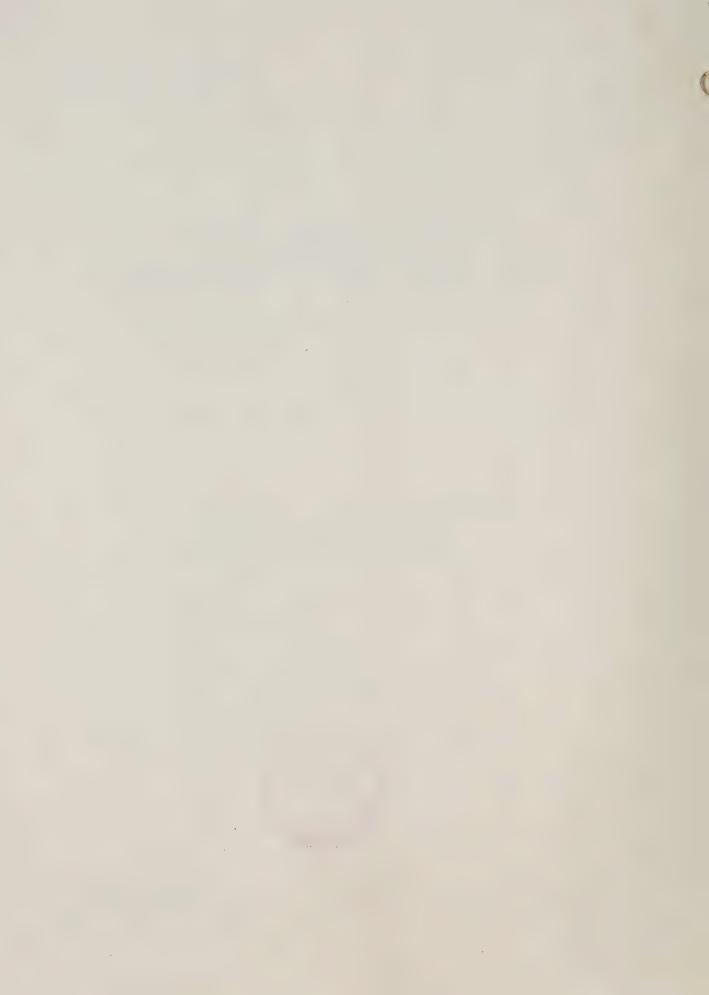
# CONFÉRENCE DES PREMIERS MINISTRES SUR LES QUESTIONS CONSTITUTIONNELLES INTÉRESSANT LES AUTOCHTONES

## ENONCE DE PRINCIPE DE L'ASSOCIATION DES FEMMES AUTOCHTONES DU QUEBEC

Québec



OTTAWA (Ontario) Les 2 et 3 avril 1985



#### CONFÉRENCE CONSTITUTIONNELLE DES PREMIERS MINISTRES SUR LES DROITS DES AUTOCHTONES

2-3 avril 1985

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### ÉNONCÉ DE PRINCIPE DE L'ASSOCIATION DES FEMMES AUTOCHTONES DU QUÉBEC

#### Introduction

Nous nous présentons à la table de négociations en tant que représentants du peuple autochtone pour vous exhorter à définir les assises constitutionnelles d'une nouvelle ère dans les relations entre les peuples autochtones et non-autochtones, entre les gouvernements autochtones et non-autochtones. Nous sommes présentes afin d'appuyer la lutte pour la reconnaissance du droit à l'autonomie politique pour toute personne qui a droit d'y participer en tant qu'autochtone.

Il y déjà trop longtemps que la question de l'égalité des sexes est artificiellement isolée à la fois sur les ordres du jour et dans l'esprit des gens.
L'égalité sexuelle n'est pas un droit <u>distinct</u>; elle est à la base de l'exercice ou de l'application de tous les autres.

La première recommandation du Comité spécial sur l'autonomie politique des Indiens, dans son rapport rendu public à l'automne 1983, est à l'effet que le gouvernment fédéral établisse une nouvelle relation avec les premières nations et qu'un élément essentiel de cette relation soit la reconnaissance de l'autonomie politique des Indiens.

Cet appel à l'établissement d'une nouvelle relation est repris tout au long du rapport.

Le Comité a compris que la nouvelle relation doit reposer sur une base juste et équitable et que pour y arriver, la participation de toutes les personnes concernées est requise.

C'est ainsi que la neuvième recommandation du Comité énonce ce qui suit:

"9. Le Comité a avancé le principe, selon lequel il revient de droit à chaque première nation indienne de déterminer qui seront ses membres, en fonction des critères qu'elle aura établis. Le Comité recommande que chaque première nation indienne adopte, comme point de départ nécessaire à la création d'un gouvernement, une procédure prévoyant la participation de toutes les personnes appartenant à cette première nation au processus de création du gouvernement, quelles que soient les restrictions de la Loi sur les Indiens."

(souligné de l'auteur)

Pour nous, cela représente une reconnaissance du droit pour les membres du peuple indien de reprendre leur statut et d'être réinscrits dans les différentes nations indiennes, et pour le peuple indien de participer au processus de formation d'un gouvernement. Le Comité suggère qu'un nouveau régime de traités, l'intervention législative et, bien sûr, l'amendement constitutionnel sont toutes des avenues qui pourraient déboucher sur cette nouvelle relation.

Nous sommes présentes à cette conférence afin de discuter d'amendements constitutionnels. Nous soumettons qu'au cours des discussions constitutionnelles portant sur les deux questions les plus importantes à l'ordre du jour, l'égalité des sexes et l'autonomie politique, on devrait envisager un nouveau régime de traités où trouveraient place à la fois le droit à l'égalité des sexes et le droit à l'autonomie politique.

Comme mesure absolument minimale, nous exhortons les participants à cette Conférence à se mettre d'accord sur des amendements précis portant sur les questions suivantes:

- La charte doit être amendée afin d'éviter qu'elle ne sanctionne par inadvertance, la discrimination fondée sur le sexe;
- 2. Le droit à l'autonomie politique en tant que droit, ancestral ou issu de traités, doit être explicitement reconnu, et un nouveau régime des traités doit être enchâssé dans la Constitution.

#### Égalité

Trois types distincts de droits doivent être protégés par les dispositions générales traitant de l'égalité sexuelle chez les peuples autochtones :

- (i) droits faisant partie de la Partie II les droits existants - ancestraux ou issus de traités, - dont il est question à l'article 35;
- (ii) droits protégés par la charte les droits mentionnés spécifiquement dans la Charte des droits et libertés;
- (iii) tous les autres droits.

A la lumière des propositions sur la table, concernant l'autonomie politique, c'est à dire, d'inclure le droit à l'autonomie politique dans un nouvel article à la partie II, plutot que dans l'article 35, il devient encore plus important de s'assurer que la garantie d'égalité s'applique à tous les droits des peuples autochtones du Canada, c'est à dire, droits ancestraux, issus de traités et les autres droits et libertés.

Les droits de la Partie II sont maintenant protégés par une disposition portant sur l'égalité, depuis l'adjonction de l'alinéa 35(4).

En ce qui a trait aux droits protégés par la Charte et aux autres droits, l'article 15, une fois en vigueur, fournira une garantie suffisante d'égalité devant la loi. L'article 28 prévoit que tous les droits et libertés mentionnés dans la charte sont garantis également aux personnes des deux sexes. Le problème qui subsiste est l'interprétation possible de l'article 25, en particulier à savoir si les "droits ou libertés - ancestraux, issus de traités ou autres - des peuples autochtones du Canada" mentionnés à l'article 25 sont exclus de la garantie d'égalité.

La proposition mise de l'avant par l'Assemblée des premières nations dans une lettre adressée au Premier Ministre Mulroney en date du 11 janvier 1985, semble tenir compte de ces préoccupations.

L'Assemblée des premières nations suggère l'addition d'un alinéa 25(2) à l'article 25 de la <u>Loi</u> constitutionnelle de 1982 qui se lirait comme suit:

"Indépendamment des autres dispositions de la présente charte, tous les droits et toutes les libertés des peuples autochtones du Canada sont garantis également aux personnes autochtones des deux sexes." (traduction libre)

Une autre solution que nous jugerions acceptable, serait une version à peine modifiée d'un texte proposé pour l'alinéa 25(2) par le gouvernement fédéral lors de la Conférence de 1984. Cet alinéa pourrait se lire ainsi:

"Rien dans cet article ne devra être interpreté de facon à abroger la garantie d'égalité accordée aux personnes des deux sexes par l'article 28 de cette charte ou à déroger à cette garantie." (traduction libre)

#### Autonomie Politique

Premièrement, nous proposons un ajout à l'article 35 de la Loi qui permettrait la reconnaissance explicite du droit à l'autonomie politique des peuples autochtones du Canada.

Deuxièmement, nous considérons qu'il est très important que les participants à cette conférence se mettent d'accord sur un amendement traitant de la mise en oeuvre des droits des peuples autochtones. Les deux années dont nous disposons avant la tenue de la prochaine conférence des premiers ministres, doivent être mises à profit. Plusieurs nations autochtones désireront peut-être entamer dès maintenant la discussion sur la mise en oeuvre de leurs droits ancestraux ou issus de traités.

Vers la fin de la Conférence des premiers ministres de 1984, une proposition conjointe fut déposée par l'Assemblée des premières nations, le Comité inuit sur les questions nationales et le "Native Council of Canada", sous forme d'un accord constitutionnel portant sur les droits des peuples autochtones du Canada (document 800-18/046), lequel incluait en annexe le texte d'un nouvel alinéa 35.2. Parallelement à la reconnaissance explicite du droit à l'autonomie politique, nous proposons une version légèrement modifiée du document 800-18/46. La clause de mise en oeuvre que nous proposons pourrait se lire comme suit:

- "35.2(1). Le gouvernment du Canada et les gouvernments provinciaux, à l'intérieur de leurs juridictions respectives, prennent l'engagement de négocier, de conclure et de mettre en oeuvre des traités avec les peuples autochtones, pour la mise en oeuvre spécifique, dans les diverses régions du Canada, des droits des autochtones.
- (2). Ces traités seront des traités au sens de l'article 35(1).
- (3). Les alinéas (1) et (2) s'appliqueront aux Premières Nations avec traités, dans la mesure où celles-ci le choisiront."
  (traduction libre)

Ce texte ou un autre semblable pour l'essentiel, enchâsserait le nouveau régime de traités préconisé par le comité spécial sur l'autonomie des Indiens.

#### Conclusion

Avec l'avènement d'une garantie non équivoque du droit à l'égalité sexuelle et la reconnaissance explicite de l'autonomie politique, les gouvernments autochtones et non-autochtones de ce pays pourront commencer à bâtir une nouvelle relation fondée sur la confiance réciproque, l'égalité des sexes et les droits collectifs.

L'article 52 de la <u>Loi constitutionnelle de</u>

1982 confirme la primauté de la Constitution du Canada.

Que cette primauté contribue à assurer la justice et

l'égalité au Canada!

DOCUMENT: 800-20/043

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# FIRST MINISTERS' CONFERENCE ON ABORIGINAL CONSTITUTIONAL MATTERS

#### SPEAKING NOTES

#### THE SASKATCHEWAN PROPOSAL



OTTAWA, Ontario April 2 and 3, 1985



#### SPEAKING NOTES

#### THE SASKATCHEWAN PROPOSAL

YESTERDAY, I INDICATED THAT SASKATCHEWAN HAD SOME SINCERE CONCERNS ABOUT THE INITIAL FEDERAL PROPOSAL.

- 1. AS I INDICATED, OUR KEY PROBLEM WAS WITH THE VERY BROAD COMMITMENT THAT THE INITIAL FEDERAL PROPOSAL CONTAINED FOR ALL ABORIGINAL PEOPLE, EVEN THOUGH THEIR CIRCUMSTANCES ARE VERY DIFFERENT. THE CONSTITUTION MUST RECOGNIZE AND TREAT FAIRLY ALL FORMS OF GOVERNMENT: TOWN COUNCILS, CITY COUNCILS, RURAL AND URBAN MUNICIPAL GOVERNMENTS, OTHER ELECTED BOARDS AND AGENCIES -- LIKE SCHOOL BOARDS.
- 2. At the same time, it is important for the aboriginal people to have constitutional recognition of their rights.

I WANT TO ACCOMMODATE THAT DESIRE WITHOUT CONFINING ANY CANADIAN
TO WHAT WOULD BE AN EXTREMELY DIFFICULT AND PERHAPS UNWORKABLE
PROCESS.

WE INTRODUCED A DRAFT CONSTITUTIONAL AMENDMENT ON ABORIGINAL SELF-GOVERNMENT LAST NIGHT AND IT IS NOW INCORPORATED INTO THE NEW ACCORD BEFORE US.

WHAT THE NEW ACCORD SAYS IS THE FOLLOWING:

WHERE AGREEMENTS BETWEEN THE ABORIGINAL PEOPLE AND THE FEDERAL AND PROVINCIAL GOVERNMENTS ARE CONCLUDED AND RATIFIED BY THE LEGISLATURES, THE RIGHTS TO SELF-GOVERNMENT OF ABORIGINAL PEOPLE ARE RECOGNIZED AND AFFIRMED.

SASKATCHEWAN PEOPLE SEE AS CRITICAL THE REQUIREMENT THAT ANY AGREEMENT ARRIVED AT MUST BE APPROVED BY AN ACT OF THE PROVINCIAL LEGISLATURE AS WELL AS PARLIAMENT.

THE CHANGE THAT WE RECOMMENDED TO THE FEDERAL PROPOSAL WAS TO MOVE
THE COMMITMENT TO PARTICIPATE IN NEGOTIATIONS OUT OF THE
CONSTITUTIONAL AMENDMENT AND PLACE IT INTO THE ATTACHED POLITICAL
ACCORD.

GOVERNMENTS WILL PARTICIPATE IN NEGOTIATIONS

DIRECTED TOWARDS CONCLUDING AGREEMENTS THAT COULD RESULT IN THE

CONSTITUTIONAL PROTECTION FOR THE AGREED UPON RIGHTS.

WE SEE A NUMBER OF ADVANTAGES TO THIS APPROACH.

1. THE PRIMARY ADVANTAGE, FROM OUR POINT OF VIEW, IS THAT IT REMOVES THE POSSIBILITY OF COURT CHALLENGES ON THE WAY WE NEGOTIATE WITH VARIOUS ABORIGINAL AND NON-ABORIGINAL GROUPS IN OUR COMMUNITIES.

AS I INDICATED YESTERDAY, IF COMMUNITIES, MUNICIPAL GOVERNMENTS

AND PROVINCES WERE FORCED TO SIT DOWN AND NEGOTIATE BY COURT

ORDER WITH AN INFINITE NUMBER OF GROUPS, THERE WILL BE FEW

PRACTICAL POSSIBILITIES OF PROGRESS.

IF GOVERNMENTS ARE GOING TO BE FORCED, BY COURT ORDER, TO SIT DOWN AND TALK ABOUT LAW-MAKING SELF-GOVERNMENT IN SITUATIONS WHERE LAW-MAKING SELF-GOVERNMENT IS CLEARLY NOT APPROPRIATE, SUCH AS IN THE MIDDLE OF ONE OF OUR CITIES, ONLY BITTERNESS AND FRUSTRATION CAN RESULT.

- 2. WE ALSO THINK THAT THE NEW PROPOSAL WILL GIVE US THE FLEXIBILITY TO TAKE INTO ACCOUNT THE INTERESTS OF ALL CITIZENS OF SASKATCHEWAN, ABORIGINAL AND NON-ABORIGINAL ALIKE, INCLUDING LOCAL GOVERNMENTS, COMMUNITY GROUPS, AND INDIVIDUALS.
- THE ASPIRATIONS OF THE ABORIGINAL PEOPLES WITH THE CONCERNS OF THOSE GOVERNMENTS WHO HAVE BEEN HESITANT ABOUT ENTRENCHING A PROVISION IN RELATION TO ABORIGINAL SELF-GOVERNMENT UNTIL DEFINED.

- 4. ABORIGINAL PEOPLES WOULD SECURE A MECHANISM WHEREBY SPECIFIC RIGHTS IN RELATION TO SELF-GOVERNMENT COULD BE RECOGNIZED AND AFFIRMED IN THE CONSTITUTION.
- 5. THE MECHANISM THAT WOULD BE USED WOULD BE CONSISTENT WITH THE HISTORIC MEANS BY WHICH ABORIGINAL PEOPLES HAVE DEALT WITH THE CROWN.
- 6. GOVERNMENTS WOULD FIND THEIR INTERESTS PROTECTED BECAUSE A CONSTITUTIONAL AMENDMENT OF THIS TYPE WOULD ALLOW THE CONCEPT OF ABORIGINAL SELF-GOVERNMENT TO BE EXPLORED IN DEPTH, AND RELATED TO THE PARTICULAR ASPIRATIONS, NEEDS, AND CIRCUMSTANCES OF PARTICULAR GROUPS OF ABORIGINAL PEOPLES, OTHER CANADIANS AND LOCAL GOVERNMENTS BEFORE CONSTITUTIONAL ENTRENCHMENT IS CONSIDERED.

IN SUMMARY, I BELIEVE OUR PERMISSIVE AND ENABLING AMENDMENT WILL DO EVERY BIT AS MUCH AS THE INITIAL ONE PUT FORWARD BY THE FEDERAL GOVERNMENT, WITHOUT COMMITTING US TO A LOT OF POTENTIAL LITIGATION AND IMPRACTICAL EXERCISES.

SASKATCHEWAN HELPED DESIGN THIS ACCORD AND WE WILL OBVIOUSLY BE SUPPORTING IT.

DOCUMENT : 800-20/043

Traduction du Secrétariat

CONFÉRENCE DES PREMIERS MINISTRES

SUR

LES QUESTIONS CONSTITUTIONNELLES

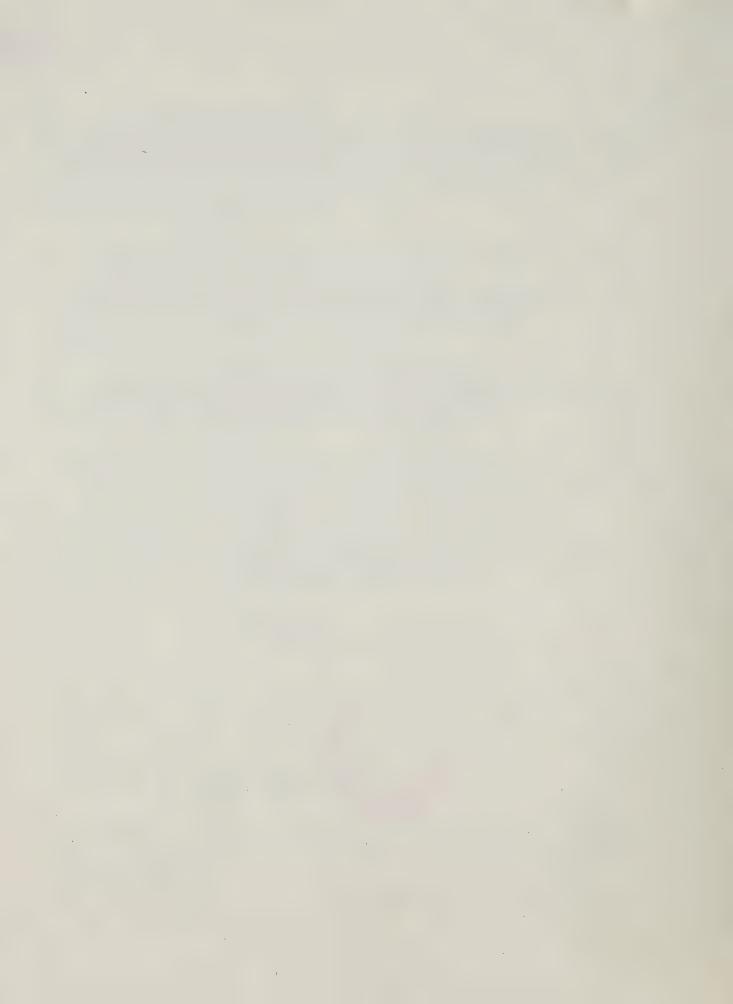
INTÉRESSANT LES AUTOCHTONES

# NOTES POUR UN DISCOURS

# LE PROJET DE LA SASKATCHEWAN



OTTAWA (Ontario)
Les 2 et 3 avril 1985



# NOTES POUR UN DISCOURS LE PROJET DE LA SASKATCHEWAN

J'AI INDIQUÉ HIER QUE LA SASKATCHEWAN NOURRISSAIT DES APPRÉHEN-SIONS À L'ÉGARD DU PREMIER PROJET FÉDÉRAL.

- 1. COMME JE L'AI MENTIONNÉ, NOTRE PRINCIPALE PRÉOCCUPATION EST LE FAIT QUE CE PROJET FÉDÉRAL SUPPOSE UN TRÈS VASTE ENGAGEMENT VIS-À-VIS DE TOUS LES PEUPLES AUTOCHTONES, MÊME SI LA SITUATION DE CHACUN D'EUX DIFFÈRE BEAUCOUP. LA CONSTITUTION DOIT RECONNAÎTRE ET TRAITER ÉQUITABLEMENT TOUTES LES FORMES D'ADMINISTRATION: CONSEILS MUNICIPAUX, ADMINISTRATIONS MUNICIPALES RURALES ET URBAINES, ORGANISMES DONT LES MEMBRES SONT ÉLUS, COMME LES COMMISSIONS SCOLAIRES.
- 2. EN MÊME TEMPS, IL IMPORTE QUE LA CONSTITUTION CONSACRE LES DROITS DES PEUPLES AUTOCHTONES.

JE VEUX QUE CELA SE CONCRÉTISE SANS QUE LES CANADIENS SOIENT PRIS DANS UNE OPÉRATION EXTRÊMEMENT DIFFICILE, VOIRE IRRÉALISABLE.

NOUS AVONS PRÉSENTÉ HIER SOIR UN PROJET DE MODIFICATION DE LA CONSTITUTION PORTANT SUR L'AUTONOMIE GOUVERNEMENTALE DES AUTOCHTONES; IL FAIT MAINTENANT PARTIE DU NOUVEL ACCORD QU'ON NOUS A REMIS.

AUX TERMES DE CE NOUVEL ACCORD, L'APPROBATION, PAR LES ASSEMBLÉES LÉGISLATIVES, DES ACCORDS CONCLUS ENTRE LES PEUPLES AUTOCHTONES ET LES GOUVERNEMENTS FÉDÉRAL ET PROVINCIAUX CORRESPOND À LA RECONNAISSANCE ET À LA CONFIRMATION DES DROITS DE CES PEUPLES À L'AUTONOMIE GOUVERNEMENTALE.

POUR LA POPULATION DE LA SASKATCHEWAN, IL EST ABSOLUMENT
ESSENTIEL QUE L'ASSEMBLÉE LÉGISLATIVE DE LA PROVINCE ET LE
PARLEMENT SANCTIONNENT PAR UNE LOI TOUT ACCORD QUI A ÉTÉ CONCLU.

NOUS AVONS RECOMMANDÉ QUE LE PROJET FÉDÉRAL SOIT MODIFIÉ POUR

FAIRE EN SORTE QUE L'ENGAGEMENT DE PARTICIPER À DES NÉGOCIATIONS

SOIT RETIRÉ DE LA MODIFICATION CONSTITUTIONNELLE ET INSCRIT

PLUTÔT À L'ACCORD POLITIQUE QUI L'ACCOMPAGNE.

LES GOUVERNEMENTS PRENDRONT PART À DES NÉGOCIATIONS VISANT LA CONCLUSION D'ACCORDS GRÂCE AUXQUELS LES DROITS CONVENUS POUR-RAIENT ÊTRE PROTÉGÉS PAR LA CONSTITUTION.

CETTE FAÇON DE PROCÉDER COMPORTE PLUSIEURS AVANTAGES.

1. LE PLUS IMPORTANT, SELON NOUS, EST LE FAIT QU'IL DEVIENDRAIT IMPOSSIBLE DE CONTESTER DEVANT LES TRIBUNAUX LA FAÇON DONT NOUS NÉGOCIONS AVEC LES GROUPES AUTOCHTONES ET NON AUTOCHTONES DES DIFFÉRENTES COLLECTIVITÉS.

COMME JE L'AI MENTIONNÉ HIER, SI LES COLLECTIVITÉS, LES ADMINIS-TRATIONS MUNICIPALES ET LES PROVINCES ÉTAIENT OBLIGÉES, PAR VOIE D'ORDONNANCE JUDICIAIRE, DE NÉGOCIER AVEC UNE MULTITUDE DE GROUPES, IL SERAIT PRATIQUEMENT IMPOSSIBLE DE PROGRESSER.

SI LES GOUVERNEMENTS DEVAIENT UN JOUR ÊTRE FORCÉS, PAR VOIE
D'ORDONNANCE JUDICIAIRE, À DISCUTER DU POUVOIR LÉGISLATIF À
CONFÉRER À DES GOUVERNEMENTS AUTONOMES DANS DES CAS OÙ IL EST
NETTEMENT INOPPORTUN DE LE FAIRE, PAR EXEMPLE, DANS CELUI D'UNE
COLLECTIVITÉ SITUÉE EN PLEIN COEUR D'UNE VILLE, UNE TELLE
SITUATION NE SAURAIT QUE SUSCITER AMERTUME ET FRUSTRATION.

- 2. NOUS CROYONS ÉGALEMENT QUE LE NOUVEAU PROJET NOUS PERMETTRA

  DE TENIR COMPTE DES INTÉRÊTS DE TOUS LES HABITANTS DE LA

  SASKATCHEWAN, TANT AUTOCHTONES QUE NON AUTOCHTONES, AINSI QUE DE

  CEUX DES ADMINISTRATIONS LOCALES ET DES GROUPES COMMUNAUTAIRES.
- 3. À MON AVIS, UNE TELLE MODIFICATION SERAIT UN MOYEN TERME
  ENTRE LES ASPIRATIONS DES PEUPLES AUTOCHTONES ET LES PRÉOCCUPATIONS DES GOUVERNEMENTS QUI SE SONT MONTRÉS HÉSITANTS À INSCRIRE
  DANS LA CONSTITUTION UNE DISPOSITION SUR L'AUTONOMIE GOUVERNEMENTALE DES AUTOCHTONES AVANT QUE LA NOTION N'EN SOIT DÉFINIE.

- 4. LES AUTOCHTONES DÉFINIRAIENT UN MÉCANISME PAR LEQUEL DES DROITS PRÉCIS RELATIFS À L'AUTONOMIE GOUVERNEMENTALE POURRAIENT ÊTRE RECONNUS ET CONFIRMÉS PAR LA CONSTITUTION.
- 5. LE MÉCANISME UTILISÉ SERAIT CONFORME À LA FAÇON DONT LES AUTOCHTONES ONT TOUJOURS TRAITÉ AVEC LA COURONNE.
- 6. LES GOUVERNEMENTS VERRAIENT LEURS INTÉRÊTS PROTÉGÉS, CAR UNE MODIFICATION CONSTITUTIONNELLE DE CE TYPE PERMETTRAIT D'ÉTUDIER EN PROFONDEUR LE CONCEPT DE L'AUTONOMIE GOUVERNEMENTALE, AINSI QUE LES ASPIRATIONS, LES BESOINS ET LA SITUATION PARTICULIÈRE DES GROUPES AUTOCHTONES, DES AUTRES CANADIENS ET DES ADMINISTRATIONS LOCALES AVANT QU'IL NE SOIT ENVISAGÉ DE MODIFIER LA CONSTITUTION.

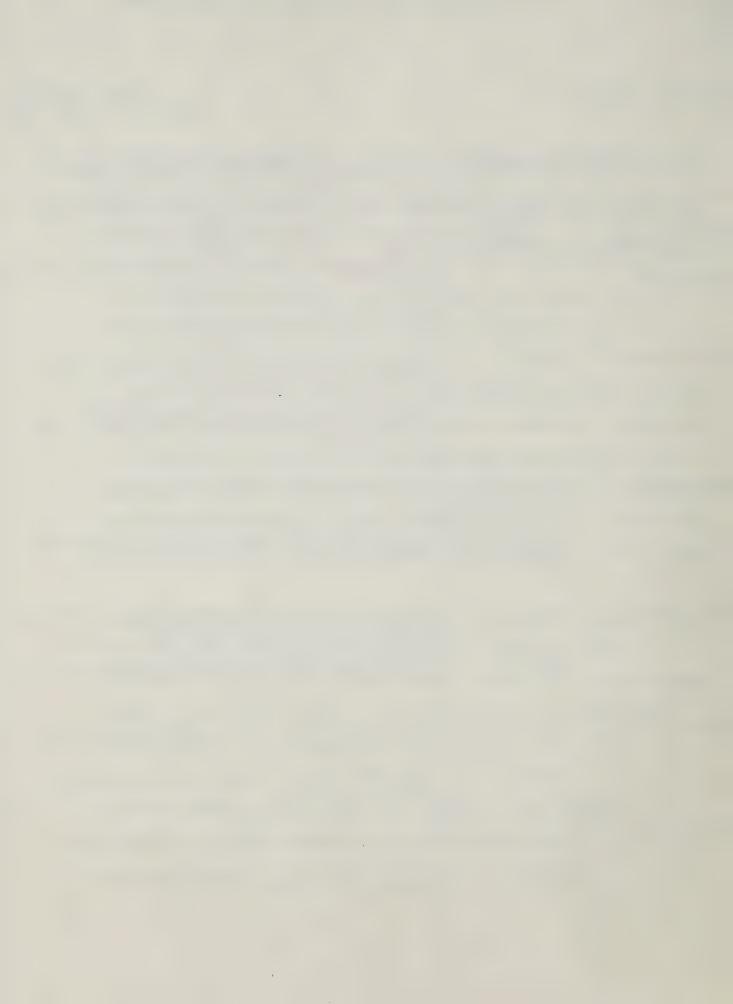
EN SOMME, NOUS CROYONS QUE LA MODIFICATION HABILITANTE QUE NOUS
PROPOSONS NOUS OUVRE DES POSSIBILITÉS ET OFFRE LES MÊMES
AVANTAGES QUE CELLE QUI A ÉTÉ MISE DE L'AVANT PAR LE GOUVERNEMENT
FÉDÉRAL, SANS NOUS EXPOSER À DES LITIGES ET À DES OPÉRATIONS
IRRÉALISABLES.

LA SASKATCHEWAN A CONTRIBUÉ À LA CONCEPTION DE CE PROJET D'ACCORD ET, NATURELLEMENT, ELLE L'APPUIERA.

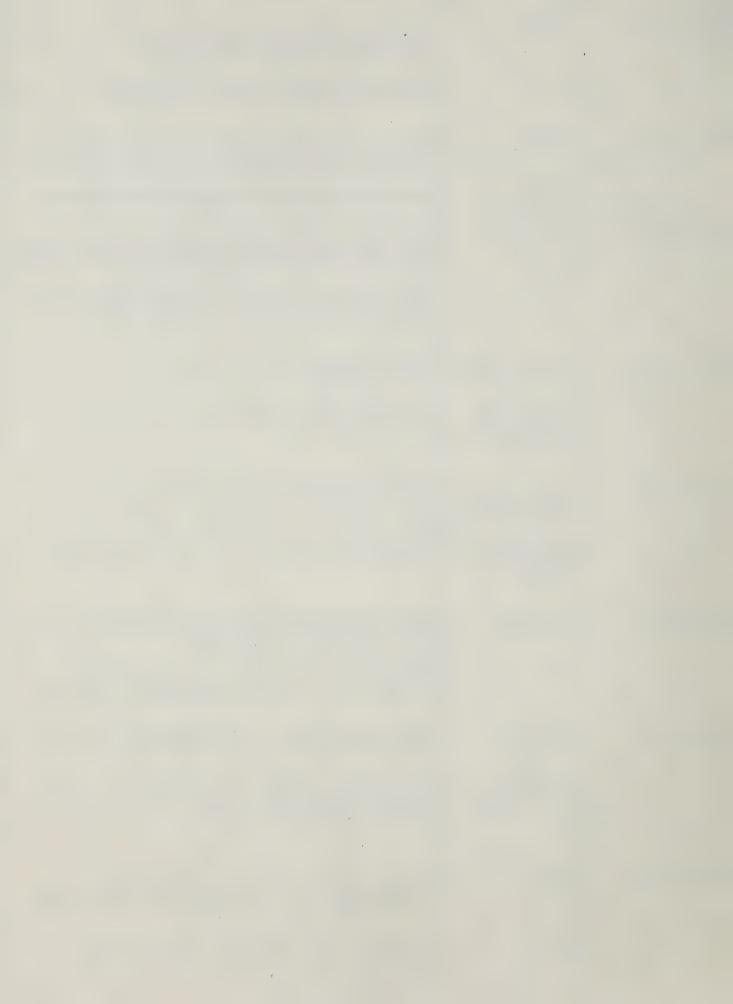
# LIST OF PUBLIC DOCUMENTS

# LISTE DES DOCUMENTS PUBLICS

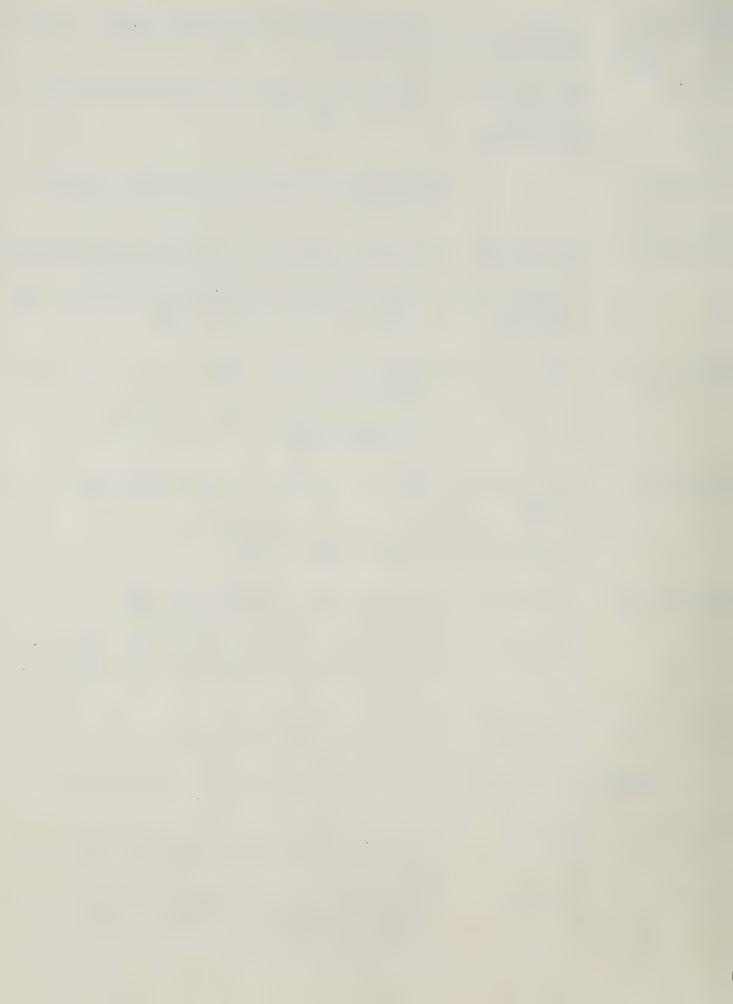
DOCUMENT NO.	SOURCE ORIGINE	TITLE		
800-20/001		Agenda		
		/Ordre du jour		
800-20/006	Ontario	Opening Statement by the Honourable Frank S. Miller, Premier of Ontario		
		Déclaration d'ouverture prononcée par l'honorable Frank Miller, Premier ministre de l'Ontario		
800-20/007	Assembly of First Nations	The Case for Indian Self-Government		
	Assemblée des premières nations	La question de l'autonomie gouvernementale des Indiens		
800-20/008	Federal	Proposed Equality Rights Amendments Currently under Consideration		
	Fédéral	Propositions de modification éventuelle des droits à l'égalité		
800-20/009	Federal	Self-Government for the Aboriginal Peoples - Lead Statement		
	Fédéral	Autonomie gouvernementale des Autochtones - Entrée en matière		
300-20/010	Federal	Sexual Equality Rights - Lead Statement		
	Fédéral	√Droits relatifs à l'égalité des sexes - Entrée en matière		
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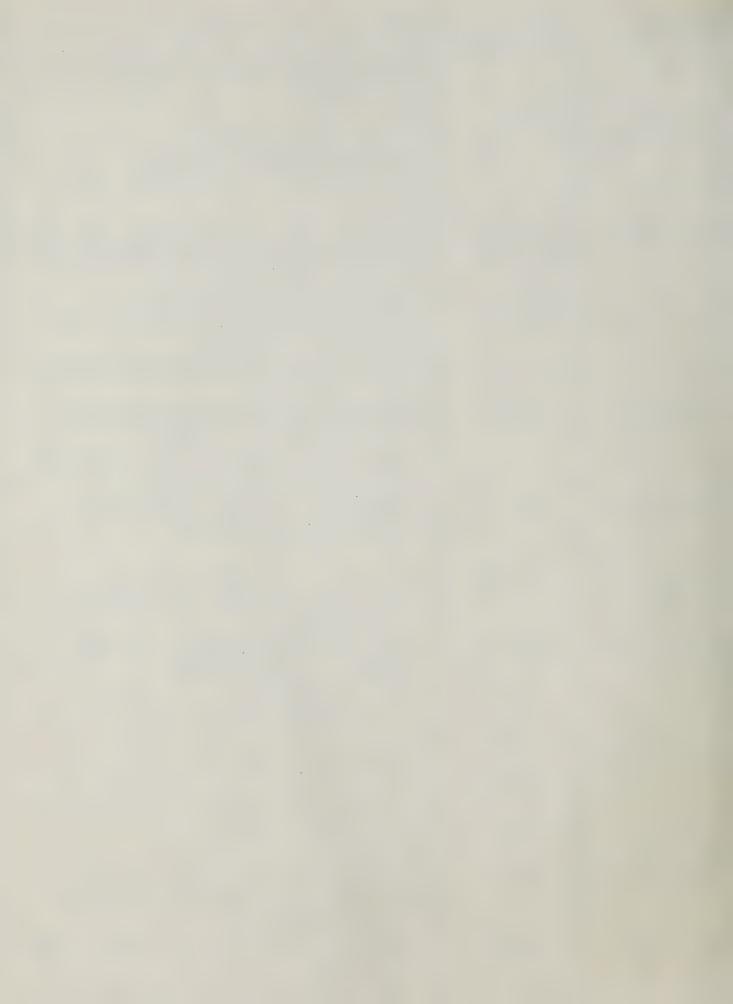
DOCUMENT NO.	SOURCE ORIGINE	TITLE
800-20/011	Federal	Mandate for Continuing Discussions - Lead Statement
	Fédéral /	Mandat pour la poursuite des discussions - Entrée en matière
800-20/013	Federal	Proposed 1985 Accord Relating to the Aboriginal Peoples of Canada
	Fédéral	Projet d'accord de 1935 concernant les peuples autochtones du Canada
800-20/014	Québec	Allocution d'ouverture du Premier ministre, Monsieur René Lévesque
	Quebec	Opening Statement by Premier René Lévesque
800-20/017	Federal	Notes for an Opening Statement by The Right Hon. Brian Mulroney, Prime Minister of Canad
	Fédéral	Notes pour l'allocution d'ouverture du très hon. Brian Mulroney, Premier ministre du Canada
800-20/018   copy	Native Council of Canada	Opening Remarks
	Conseil des autochtones du Canada	Allocution d'ouverture
800-20/019	Assembly of First Nations	Speaking Notes for National Chief
	Assemblée des premières nations	Notes pour l'allocution du chef national
800-20/020	Manitoba /	Opening Remarks by Honourable Howard Pawley, Q.C., Premier of Manitoba
	100	Allocution d'ouverture de l'hon. Howard Pawley, c.r., Premier ministre du Manitoba
300-20/021	British Columbia	Opening Remarks of the Honourable William R. Bennett, Premier of British Columbia
	Colombie- Britannique	Allocution d'ouverture prononcée par l'hon. William R. Bennett, Premier ministre de la Colombie-Britannique
800-20/024	Québec	Entente concernant la construction et l'exploitation d'un centre hospitalier dans le territoire de Kahnawake
	Quebec 🗸	Agreement Concerning the Building and Operating of a Hospital Centre in the Kahnawake Territory



DOCUMENT NO.	SOURCE	TITLE
800-20/025	Québec	Résolution: Motion portant sur la reconnaissance des droits des autochtones
	Quebec	Resolution: Motion for the Recognition of Aboriginal Rights in Quebec
800-20/026	Inuit Committee on National Issue	Opening Remarks by Zebedee Nungak and John Amagoalik
	Comité inuit sur les affaires nationales	Allocution d'ouverture de Zebedee Nungak et John Amagoalik
800-20/027	1	Statements by the Prairie Treaty Nations Alliance
800-20/029	Assembly of First Nations	Proposed 1985 Constitutional Accord Relating to the Aboriginal Peoples of Canada
	Assemblée des premières nations	Projet d'Accord constitutionnel relatif aux peuples autochtones du Canada
800-20/030	Saskatchewan	Notes for Opening Remarks by the Honourable Grant Devine  Notes pour l'allocution d'ouverture de M. Grant Devine
g00-20/031	Prince Edward Island	Opening Statement by Honourable James M. Le
	Ile-du-Prince- Edouard	Allocution d'ouverture de l'hon. James M. Lee
<b>3</b> 00-20/032	Nova Scotia	Opening Remarks by the Hon. John M. Buchanan, Premier of Nova Scotia
	Nouvelle- Ecosse	Allocution d'ouverture de l'hon. John M. Buchanan, Premier ministre de la Nouvelle- Ecosse
800-20/035	British Columbia	British Columbia Proposal
	Colombie- Britannique	Proposition de la Colombie-Britannique
800-20/041	Federal	Proposed 1985 Accord Relating to the Aboriginal Peoples of Canada (Tabled April 3, 1985)
	Fédéral	Projet d'accord 1985 concernant les peuples autochtones du Canada (Déposé



DOCUMENT NO.	SOURCE	TITLE
800-20/042	Québec	Enoncé de principe de l'Association des femmes autochtones du Québec
	Quebec	Statement of the Quebec Native Women's Association
800-20/043	Saskatchewan	Speaking Notes - The Saskatchewan Proposal
		Notes pour un discours - Le projet de la Saskatchewan
800-20/045		List of Public Documents
		Liste des documents publiques
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800-20/051	Fideral 1	Right Honourable B. minister of Canada
800-20/052	CICS	- Verbalem Granscript
800-20/053	CICS	- Leval + Economic Conditions at aboriginal Peoples - Les Conditions Devales et Economiq des autochtones
800-20/054	CICS	- Federal Programs and Services for alexiginal Peoples  Les Programmes et les Services  Federa: " Deitain " 2."
200-20/055	CI CS	- Constitutional and Legislative milestones in aberiginal Rights - 1763 To 1984
800-20/056	2708	- Dreaties and Land Claims - Les Drailes et Les Revendications
800-20/057	CICS	Seritoriales  - Aleoriginal Peoples and Constitution.  Peform - 1978 To 1984  - Lee autochtones et La Reforme
800-20/058	CICS	- Removal of discrimination from
		- La Suppression des Rispositions Riscreminatoires dans la la Rec. La Riene
800-20/059	CICS	- aberiginal kelf-koverns. I - L'autoronie Gouvernes Tale des autochtones
800-20/060	CIRS	- Canada's aboriginal Person - 2/11
800-20/06/	CILS	- I will its - What the Constitution rays about
		Aborizmal peoples



The Rights of Aboriginal Peoples

Ottawa, April 2-3 1985



Notes for an Opening Statement by the Right Honourable Brian Mulroney, Prime Minister of Canada



# NOTES FOR AN OPENING STATEMENT BY THE RIGHT HONOURABLE BRIAN MULRONEY, PRIME MINISTER OF CANADA

FIRST MINISTERS' CONFERENCE THE RIGHTS OF ABORIGINAL PEOPLES OTTAWA, APRIL 2-3, 1985



### INTRODUCTION

It is an honour and an important duty for me to participate with you in this unique undertaking, this Conference of First Ministers on constitutional matters relating to the Inuit, the Indians, and the Métis of Canada. Although many of you have attended the two previous conferences, this is my first. As such, I want to set out my objectives for what I consider to be an essential undertaking for our federation.

It is not my intention, nor that of the new federal government, simply to follow the course which has been charted before. I believe there is new ground which can be explored, new understandings which can be reached.

In these two days of meetings, I wish to affirm and demonstrate the government's commitment to the further identification, definition and constitutional protection of the rights of the aboriginal peoples. I look to the goodwill of all participants to produce tangible progress by the time we adjourn tomorrow. I will make specific commitments on behalf of the federal government. I look for specific commitments from the provincial and territorial governments and from the representatives of the aboriginal peoples.

Given Canada's long-standing traditions of fairness, tolerance and understanding, I know that all Canadians expect this of me and of each of us.

My objective at the Regina Conference on the Economy, and again at the National Economic Conference, was to encourage the key actors in the Canadian economy to recast their dialogue in terms that made issues into shared concerns, not jurisdictional disputes. And so no one should be surprised that one of my objectives for this Conference is to encourage all participants to accept their share of responsibility in the search for new understandings. You know of my commitment to national reconciliation. You know of my determination to breathe new life into and restore harmony to federal-provincial relations. We have seen the advantages of moving to consensus and the new hope it offers us.

To all participants, I want to say that we in the federal government will demonstrate our new approach at this Conference by not surprising you with initiatives for which you are not prepared, nor adopting pressure tactics to move you into positions with which you are not agreed. We will be up front and open.

To the aboriginal leaders, I want to say that, having been a labour negotiator, I know what it means to be sitting on one side of the table, looking at powerful interests on the other. But this is not the situation today. We are here together to try to come to grips with problems common to us all.

# THE CURRENT SITUATION AND ITS BACKGROUND

It is important that we have a common understanding of why we are here. In 1982, after years of attempting to be heard, the Indian, Inuit and Métis peoples convinced governments that there was unfinished business on the national agenda fundamental to their future and to the future of Canada.

You know, I am here today not only as the Prime Minister, but as the Member of Parliament for Manicouagan, one of the largest ridings in Canada, home to Cree, Montagnais, Naskapi, Huron and Inuit. I take pride in the fact that it was Gaston McKenzie, a Montagnais leader, who seconded my nomination as the Progressive Conservative candidate there.

I am well aware of the issues and problems faced by the aboriginal peoples I represent, as well as those faced by aboriginal peoples across Canada. As Prime Minister, I have a responsibility to lead, a responsibility to initiate change. And so I say to you that I will spare no effort to establish the conditions to bring about the changes which must occur. It is to create change that we are engaged in this process, a process which can be frustrating, slow, and tortuous. Yet, we cannot afford to abandon it simply because the task is too daunting or because vested interests will be disturbed. On the contrary, we must renew our efforts.

It is an important task that Canada embarked on in 1982, when three articles were included in the Constitution Act dealing specifically with the aboriginal peoples. In doing so, a commitment was made that we were going to engage in fundamental, substantial and positive change respecting aboriginal peoples. In 1983, governments signed an accord which, among other things, extended constitutional protection to land claims agreements and committed governments to the principle that before any amendment is made to the Constitution respecting aboriginal peoples, a conference would be convened in which they would participate.

Although the 1984 Conference did not produce tangible results, new foundations have since been established during the course of the preparatory meetings with Mr. Crosbie and Mr. Crombie. I have followed these meetings with interest and noted the positive will demonstrated by all participants to get the job done, to put forward new ideas, to challenge existing concepts, to draw upon specific experiences, to move toward a consensus.

Ontario, Manitoba and Saskatchewan have made important contributions to moving discussions forward on all elements of our endeavour. I note as well the significant contribution by the governments of Nova Scotia and New Brunswick to the discussions on self-government for aboriginal peoples and to those on the clarification of existing provisions relating to equality between aboriginal men and women. Alberta has brought to these discussions its useful experience based on a relationship with the Métis which remains unique in Canada, under the provincial *Métis Betterment Act*.

I understand that British Columbia, Newfoundland and Prince Edward Island, among other provinces, have stressed the importance of a full and open exchange of views on aboriginal matters, and I welcome it. I was pleased to learn that the National Assembly of Quebec recently adopted a resolution recognizing the special rights of aboriginal peoples. The two territories have offered us their special insights

and inspiration as they explore changes in their political institutions.

For their part, the representatives of the aboriginal peoples have articulated their concerns in a frank and open manner and have contributed constructively to the preparatory discussions.

And so it is no surprise to me that many participants have come to this table expressing a willingness to consider constitutional provisions relating to self-government. The goodwill and momentum which has been generated over the last few months will sustain us in the difficult deliberations ahead and will lead us to concrete results.

# RELATIONS BETWEEN GOVERNMENTS AND ABORIGINAL PEOPLES IN CANADA

The aboriginal leaders present here today and their colleagues at the tribal council, band, community or association level, together represent the descendants of the original peoples of Canada. They have persevered and maintained their cultural identity through many years of adversity. This is part of our national heritage, part of how we define ourselves as a society, something to be celebrated, not ignored.

There is another side, however, to this heritage of tenacity and perseverance. In describing the current situation, I could read you the litany of social indicators on the disparities suffered by aboriginal peoples in unemployment, in lives of despair ending in alcoholism or suicide, the waste in human potential caused by inadequate educational facilities and substandard housing. But I do not want to trade in sorrow. We are familiar enough with the statistics and I know some of you live with them on a day-to-day basis and see them reflected in the eyes of your children.

These social indicators are symptoms of an underlying problem which we must address. They are social indicators which we here in this room can change. There are those who would say that the answer is more welfare. More social workers. More programs. But that is the way to dependency and misery. As was said by George Manuel, the Shuswap leader whose work in Indian politics has contributed greatly to our being here today, "Indians are not seeking the best welfare system in the world."

So, if more welfare is not the answer, then what is? I say the answer lies in aboriginal peoples assuming more responsibility for their own affairs, setting their own priorities, determining their own programs. As Zebedee Nungak of the Inuit Committee on National Issues said at the ministerial meeting held last month in Toronto, our task here is to do "some constructive damage to the status quo in Canada." We are here to chart a new course and to set out on it.

I have come across Hugh Brody's book, Maps and Dreams, about the Beaver Indian people in northern British Columbia. It is the title which sticks in my mind because that is very much what this is all about: maps and dreams. Maps to find our way to Canada's twenty-first century. Dreams to guide and sustain us.

The Canada we are building for the twenty-first century must have room for self-governing aboriginal peoples. Where our on-going arrangements have failed to leave room for aboriginal peoples to control their own affairs, we must find room. Canada is big enough for us all. We need to rethink our understanding of Canada, so that the aboriginal peoples too will have their own space in our own time.

# SELF-GOVERNMENT FOR ABORIGINAL PEOPLES

Different forms of self-government already exist in Canada and most Canadians take them for granted. Apart from electing their federal and provincial governments, Canadians run their own school boards, village and town councils. Canadians have also created regional governments when

urban centres became too complex to be administered by a single city council.

In Canada, we assume that we can participate in the charting of our destinies, in determining how we are represented, in holding our representatives accountable. But the Indians, Inuit and Métis peoples do not feel they have the same degree of participation.

In Canada, we assume that our cultural and linguistic backgrounds and traditions will be respected, even cherished and enhanced. But Indian, Inuit and Métis peoples do not have this assurance, nor the power to determine their own cultural development. In fact, there were times when aspects of their cultures were subject to legal sanctions and suppression.

The key to change is self-government for aboriginal peoples within the Canadian federation. We are a cautious people and self-government is a term which is worrisome to some of us. But self-government is not something that I fear. It is not an end in itself, but rather a means to reach common goals. It is the vehicle, not the destination. The challenge and satisfaction is in the journey itself.

The federal government's approach to self-government for aboriginal peoples takes account of these realities, of the inventiveness and creativity that Canadians have always shown in developing their democratic institutions. It is through self-government that a people can maintain the sense of pride and self-worth which is necessary for productive, happy lives.

As a Canadian and as Prime Minister, I fully recognize and agree with the emphasis that the aboriginal peoples place on having their special rights inserted into the highest law of the land, protected from arbitrary legislative action. Constitutional protection for the principle of self-government is an overriding objective because it is the constitutional manifestation of a relationship, an unbreakable social contract between aboriginal peoples and their governments.

In seeking constitutional change, I recognize that this alone cannot resolve social and economic problems. Constitutional change is not enough to reduce disparities and correct injustices. Rather, improvements to the economic and social circumstances of aboriginal peoples must be pursued at the same time as changes to our Constitution are sought to define the rights of aboriginal peoples. Action is required on both fronts and these two sets of endeavours, while separate, are mutually supportive.

The new federal government has already initiated actions in regard to aboriginal peoples leading to increased self-government and to increased well-being. In doing so, it has sought the cooperation, participation and contribution of the provinces, territories and aboriginal groups in ensuring the success of these endeavours. These are smaller steps to larger dreams. They are important signals with real significance. Our early track record has already been posted.

Since September, my colleague John Crosbie has ably directed preparations for this Conference by advancing constitutional proposals and exploring possible avenues of compromise with all participants.

For his part, my colleague David Crombie has undertaken a number of important initiatives. He has stated the government's intention to support the political evolution of the Northwest Territories in a way which will lead to the building of Nunavut in the eastern Arctic and give the aboriginal peoples of the western Arctic protection and a strong voice. He has also begun to explore models of self-government as well as changes to policy and legislation that may be needed to create or enhance those models. He is considering block funding through which Indian governments would have more freedom to determine their own priorities and establish their own programs.

He has introduced a process of renovation of Treaty 8, which involves Indian bands living mostly in northern Alberta, Saskatchewan and British Columbia, to deal with past grievances and to establish a sound relationship to move into the future. This renovation process should provide us with a guide for building a positive, constructive relationship with

other aboriginal communities. The Minister has also undertaken an examination of the claims settlement process, giving consideration to alternatives to current policy. He has begun discussions with provinces to address the problems encountered by many urban aboriginal persons.

These are critical initiatives; they underpin our constitutional discussions and root them in reality.

### MY EXPECTATIONS FOR THIS CONFERENCE

Canadians have rightfully objected to excessive intrusion of government into their lives. Governmental control is resented by us all. Yet the most regulated, controlled and intruded-upon in Canada are the aboriginal peoples. One of the changes which must be made in the current state of affairs is the removal of these excessive interventions. The alternative — which is our main agenda item — is self-government.

Governments require a better grasp of aboriginal peoples' needs and aspirations. If they demonstrate sufficient creativity and flexibility, then all of Canada will benefit from aboriginal peoples who are secure in their own cultures and full partners in Canadian society.

Aboriginal peoples need a better understanding of the constraints faced by governments, one which takes into account the realities of the current economic environment.

Canada's aboriginal peoples face difficult choices in the years to come. They will have to decide what mix of traditional and modern life they find appropriate to meet their needs. These are trade-offs that they will have to make as they seek to define their rightful place in Canadian society. But they alone can strike that critical balance between old and new.

This is a challenging prospect for aboriginal peoples and for the rest of us. And if this prospect is to become a reality, it will call for an act of faith and imagination on all sides. The aboriginal peoples will have to be able to count on the continuing understanding and support of governments as they move toward an ever-greater control of their lives and circumstances. We all look forward to a new sharing of responsibility. We all look forward to a new life for the aboriginal peoples of Canada, one in which the opportunity to release creativity and entrepreneurship is fostered and enhanced.

But this cannot be achieved at the expense of cultural identity. I see the aboriginal peoples making their special contribution to Canadian society as Indians, Inuit and Métis. There is no need to sever one's roots.

For those who wish to remain within their communities, that choice should not preclude their ability to lead a rewarding life. The Indian reserve, the Métis settlement and the Inuit community must remain places of retreat and spiritual renewal for those who opt to live in an environment away from the one into which they were born. There are Inuit on Arctic drilling rigs, Métis farmers on the prairies and Indian lawyers in southern cities. I know Billy Diamond of the James Bay Cree who heads a school board and an airline and Mary Simon who spoke out for Inuit interests at the National Economic Conference.

As Mr. Richard Nerysoo pointed out at Regina last February, in reference to the activity in the Northwest Territories on natural resources development, it is not a case of newer technologies destroying older ways, but rather of the new co-existing with the old.

And a renewed sense of self-assurance and self-worth, flowing from the acceptance both by aboriginal peoples and governments in Canada of mutual responsibilities and common objectives, is essential to reduce poverty and dependency. It will enable Indians, Inuit and Métis to play their full roles as active and important contributors to the national economy and as holders of a unique and special place in the national mosaic.

The challenges we face at this Conference will test our wisdom and generosity of spirit as political leaders. These challenges, moreover, will test our ability to translate political will into practical action.

As you know, the *Constitution Act, 1982* and the subsequent Accord of 1983 require that four aboriginal constitutional conferences be convened in the five-year period 1982 to 1987. In effect, then, this Conference represents the mid-point in the aboriginal constitutional process.

Ministers and aboriginal leaders have developed an agenda which, in my view, shows great promise. Over the next two days, we will be discussing self-government for aboriginal peoples, equality between aboriginal men and women and a mandate for more intensive discussions in the next two years. The measure of agreement reached here will determine the shape and pace of events to come over the next two years.

I believe it is within our grasp to make this Conference not just the mid-point, but the turning point in our efforts to identify and define the rights of aboriginal peoples.

Let us decide at this Conference that our Constitution shall acknowledge that aboriginal peoples have a right to self-government.

Let us agree that we will work out together, over time and on a case-by-case basis, the different means, constitutional and otherwise, that will be required to respond to the special circumstances of different aboriginal communities. Such an achievement would be historic in nature, the first step toward a new relationship between self-governing aboriginal communities and governments in Canada, a relationship upon which we may hope to build the mutual trust and confidence that has eluded us for so long.

The Iroquois teach us that it is the obligation of chiefs and elders in councils such as this to keep in mind the unborn generations whose faces are coming toward us. Decisions are to be made with the well-being of the seventh generation in mind. That wisdom should impress upon us the seriousness of our task in these discussions as we work together toward creating a Canada for the twenty-first century, for the descendents of all those who sit around this table unto the seventh generation.

### NOTES

## **NOTES**

Je crois que nous pouvons faire de cette Conférence le point tournant de cette opération constitutionnelle.

Il m'apparaît essentiel de reconnaître le droit des autochtones à l'autonomie gouvernementale. Convenons de nous engager à établir les modalités selon lesquelles nous pourrons répondre aux circonstances particulières des diverses collectivités autochtones.

Ce serait là une réalisation historique, un premier pas vers l'établissement de nouveaux rapports entre les collectivités autochtones et les gouvernements, des rapports qui permetront d'instaurer la création de ce climat de confiance mutuelle qui nous a échappé depuis si longtemps.

Les Iroquois nous enseignent qu'il est du devoir des chefs et des anciens, lors de réunions comme celle-ci, de penser aux générations qui vont naître, d'assurer leur bien-être jusqu'à la septième génération. Tant de sagesse devrait nous faire prendre conscience de l'importance de notre tâche, nous qui prendre conscience de l'importance de notre tâche, nous qui dâtissons le Canada du vingt et unième siècle, pour nos descendants à nous tous, jusqu'à la septième génération.

aérienne; à Mary Simon, qui a défendu les intérêts des Inuit à la Conférence économique nationale.

Comme M. Richard Merysoo le signalait à Régina, en février dernier, à propos de l'exploitation des ressources naturelles dans les Territoires du Mord-Ouest, il ne s'agit pas de détruire les traditions pour faire place aux techniques nouvelles, mais bien de voir comment l'ancien et le nouveau peuvent coexister.

Si nous voulons que les autochtones reprennent confiance en eux-mêmes, il importe que les gouvernements et les autochtones reconnaissent leurs responsabilités mutuelles et leur communauté d'objectifs. C'est là une condition essentielle de la lutte contre la pauvreté et la dépendance. Les Indiens, les Inuit et les Métis pourront ainsi participer pleinement au développement de l'économie nationale, tout en continuant d'occuper leur place particulière dans la société canadienne.

Les défis auxquels nous aurons à faire face au cours de la Conférence qui s'ouvre aujourd'hui mettront à l'épreuve le jugement et l'ouverture d'esprit des chefs politiques que nous sommes. Ces défis nous donneront aussi l'occasion de démontrer notre capacité de traduire notre volonté politique en gestes concrets.

Comme vous le savez, la Loi constitutionnelle de 1982 et l'Accord de 1983 prévoient que de 1982 à 1987, quatre conférences doivent avoir lieu sur les questions constitution-nelles intéressant les autochtones. À la fin de la présente Conférence, nous aurons donc parcouru la moitié du chemin tracé par la Constitution.

Les ministres et les leaders autochtones ont dressé un ordre du jour qui me semble fort prometteur. Au cours des deux prochains jours, nous nous pencherons sur l'autonomie gouvernementale des autochtones, sur l'égalité entre les hommes et les femmes autochtones et sur un mandat visant à intensifier les discussions au cours des deux années à venir. L'étendue du terrain d'entente à cette Conférence déterminera l'orientation et le rythme des travaux des deux années à venir.

ainsi assurés de la survie de leurs cultures et devenus partenaires à part entière au sein de la société canadienne.

Quant aux peuples autochtones, ils doivent mieux comprendre les contraintes auxquelles font face les gouvernements, dont l'action doit être dictée par la situation économique.

Les peuples autochtones du Canada sont appelés à faire des choix difficiles au cours des années à venir. Ils devront trouver eux-mêmes le juste dosage de tradition et de modernisme qui convient à leurs besoins. Ce sont là des compromis qu'ils devront faire pour définir la place qui leur revient au sein de la société canadienne. Mais cet équilibre critique entre l'ancien et le nouveau, eux seuls peuvent le trouver.

Voilà la passionnante perspective qui s'ouvre aux autochtones, ainsi qu'à nous tous. Pour en faire une réalité, tous seront appelés à faire preuve de conviction et d'imagination. Les autochtones devront pouvoir compter sur une compréhension et un appui de tous les instants de la part des gouvernements, au fur et à mesure qu'ils prendront en main leur vie et leur situation. Mous souhaitons tous un nouveau partage des responsabilités. Nous souhaitons tous que les peuples autochtones du Canada puissent pleinement mettre à profit leur creativité et leur esprit d'entreprise.

Pourtant, rien de tout cela ne saurait s'accomplir aux dépens de leur identité culturelle. C'est à titre d'Indiens, d'Inuit et de Métis que les autochtones contribueront au mieux-être de notre société. Nul ne devrait avoir à rompre avec son passé.

Ceux et celles qui choisiront de vivre au sein de leurs communautés ne devront pas sacrifier ainsi toute chance de mener une vie enrichissante. Pour ceux et celles qui décideront de vivre dans un milieu différent de celui qui les a vus naître, la réserve indienne, le village métis et la collectivité inuit devront rester un lieu de ressourcement, de renouveau spirituel. Il y a des Inuit qui travaillent sur des installations de forage dans l'Arctique, des Métis qui exploitent des fermes dans les Prairies et des Indiens qui pratiquent le droit dans nos centres urbains. Je pense à Billy Diamond, des Cris de la Baie centres urbains. Je pense à Billy Diamond, des Cris de la Baie dentes urbains, de commission scolaire et une compagnie

création du Nunavut dans l'est de l'Arctique et à la mise sur pied dans l'ouest d'une administration qui assurera protection et participation aux peuples autochtones. Il a aussi entrepris d'examiner divers modèles d'autonomie gouvernementale ainsi que les changements à apporter à nos politiques et lois pour les appliquer ou les améliorer. Il envisage la formule du financement global qui donnerait aux gouvernements indiens plus de latitude pour fixer leurs priorités et élaborer leurs propres programmes.

Il a amorcé l'examen du Traité n° 8 qui touche des bandes indiennes vivant pour la plupart dans le nord de l'Alberta, de la Saskatchewan et de la Colombie-Britannique, afin de réglet certains griefs et d'ouvrir la voie à de saines relations pour l'avenir. Cette démarche devrait nous servir de guide dans nos efforts pour établir des rapports positifs et constructifs avec d'autres collectivités autochtones. Le Ministre a également entrepris une étude de la politique de règlement des revendications tentitoriales afin de voir quelles autres voies pourraient tions territoriales afin de voir quelles autres voies pourraient provinces au sujet des problèmes que connaissent les autochprovinces au sujet des problèmes que connaissent les autochprovinces vivant en milieu urbain.

Il s'agit là de démarches essentielles qui sous-tendent nos discussions constitutionnelles et les assoient sur une base concrète.

# CE ONE J'ATTENDS DE LA CONFÉRENCE

Les Canadiens se sont élevés avec raison contre toute intrusion excessive de l'État dans leur vie. Chacun de nous accepte mal un contrôle gouvernemental, quel qu'il soit. Or, les plus touchés par des règlements, des contrôles et des intrusions de toutes sortes sont les autochtones. Il importe donc de supprimer ces interventions excessives. La solution, qui est d'ailleurs notre principal point à l'ordre du jour, c'est l'autonomie gouvernementale.

Les gouvernements se doivent de mieux comprendre les besoins et les aspirations des autochtones. Si les gouvernements manifestent suffisamment de créativité et de souplesse, le Canada tout entier bénéficiera de l'apport des autochtones le

sentiment de fierté et l'assurance indispensables à son épanouissement.

En tant que Canadien et en tant que Premier ministre, je comprends parfaitement l'importance que les peuples autochtones accordent à la reconnaissance de leurs droits particuliers dans la loi suprême du pays, où ils seraient à l'abri de toute mesure législative arbitraire. La reconnaissance dans la Constitution du principe de l'autonomie gouvernementale m'apparaît être un objectif primordial parce qu'elle constitue la manifestation la plus solennelle de l'établissement d'un lien, d'un contrat social indissoluble entre les autochtones et les gouvernements.

Uadmets que le fait de modifier la Constitution en ce sens ne peut à lui seul régler les problèmes socio-économiques, ni réduire les disparités ni corriger les injustices. Il faut donc, en même temps que nous nous employons à modifier la Constitution pour y définir les droits des autochtones, travailler à améliorer leurs conditions économiques et sociales. Des améliorer leurs conditions économiques et sociales. Des distinctes doivent être prises sur les deux fronts, et quoique distinctes, ces deux entreprises se renforcent mutuellement.

Le nouveau gouvernement fédéral a déjà pris des initiatives visant à accroître l'autonomie gouvernementale et le bien-être des peuples autochtones et pour ce faire, il a sollicité la collaboration, la participation et la contribution des provinces, des territoires et des autochtones eux-mêmes. Ce ne sont là que les premiers pas vers la réalisation de grands rêves. Mais que les premiers pas vers la réalisation de grands rêves. Mais nos couleurs.

Depuis septembre, mon collègue John Crosbie s'est employé à préparer avec le plus grand soin la Conférence qui nous réunit aujourd'hui. C'est ainsi qu'au cours des derniers mois, il a soumis diverses propositions constitutionnelles aux participants et examiné avec eux certaines possibilités de compromis.

Mon collègue David Crombie a lui aussi pris un certain nombre d'initiatives importantes. Il a clairement indiqué l'intention du gouvernement de favoriser pour les Territoires du Nord-Ouest une évolution politique qui mènera à la

## DES VOLOCHLONES VOLOCONIE COUVERNEMENTALE

La plupart des Canadiens tiennent pour acquises les diverses formes d'autonomie gouvernementale qui existent au Canada. Non seulement les Canadiens élisent-ils leurs représentants au Parlement et à leur assemblée législative, mais ils gèrent leurs propres conseils municipaux et scolaires. Ils ont constitué des administrations régionales pour gérer des centres urbains devenus trop complexes pour un seul conseil municipal.

Alors que la majorité d'entre nous tient pour acquis que nous pouvons influer sur notre destinée en choisissant ceux qui nous représentent et en exigeant d'eux qu'ils rendent des comptes, les Indiens, les Inuit et les Métis, eux, n'ont pas le même sentiment de participation à notre société.

Nous tenons pour acquis que nos valeurs et nos traditions culturelles et linguistiques seront respectées, voire protégées et valorisées. Mais les Indiens, les Inuit et les Métis n'ont pas cette certitude, pas plus d'ailleurs que le pouvoir de déterminer leur propre développement culturel. En fait, il fut même ner leur propre développement culturel. En fait, il fut même ner leur propre développement culturel. En fait, il fut même frappées de sanctions légales et d'interdictions.

La clé des changements qui s'imposent pour améliorer le sort des peuples autochtones est de leur accorder l'autonomie gouvernementale au sein de la fédération canadienne. Nous sommes un peuple prudent et la notion d'autonomie gouvernemenmentale peut paraître quelque peu inquiétante pour certains d'entre nous. Mais pas pour moi. L'autonomie gouvernementale n'est pas une fin en soi, mais plutôt un moyen d'atteindre des objectifs communs. C'est l'outil qui sert à bâtir et c'est dans le fait de bâtir que résident le défi et la satisfaction.

L'approche du gouvernement fédéral à l'égard de l'autonomie gouvernementale des autochtones tient compte de ces réalités aussi bien que de l'esprit inventif et créatif dont les Canadiens ont toujours fait preuve dans la définition de leurs institutions démocratiques. C'est dans l'exercice de son autonomie gouvernementale qu'un peuple peut conserver le

vivent chaque jour avec la cruelle réalité qu'elles représentent et en voient le reflet dans les yeux de leurs enfants.

Ces indicateurs sociaux ne sont que les symptômes d'un problème plus profond et c'est à celui-ci que nous devons nous attaquer. Cette situation, nous tous ici aujourd'hui pouvons la changer.

Certains préconisent l'accroissement de l'aide sociale, du nombre de travailleurs sociaux, du nombre de programmes. Mais cette voie mène tout droit à la dépendance et à la misère. Comme l'a dit le leader shuswap George Manuel, dont le dévouement à la cause des Indiens a largement contribué à la conscientisation des gouvernements, «ce que les Indiens veulent n'est certainement pas d'être soumis au meilleur régime d'aide sociale au monde».

La solution n'est donc pas de donner plus d'aide sociale, mais d'après moi, de permettre aux autochtones d'assumer une plus grande responsabilité de leurs propres affaires, de fixer leurs propres priorités, d'établir leurs propres pro-grammes. Comme Zebedee Nungak, du Comité inuit sur les affaires nationales, le faisait remarquer le mois passé à la rencontre ministérielle de Toronto, notre tâche consiste à wbouleverser de façon constructive le statu quo». Nous sommes ici pour tracer une nouvelle voie et pour nous y engager.

Le livre de Hugh Brody sur les Indiens Beaver du nord de la Colombie-Britannique a un titre qui m'a frappé : Maps and Dreams. En effet, il résume parfaitement la démarche dans laquelle nous sommes engagés : guidés et soutenus par notre vision d'une société plus juste, nous cherchons le chemin du Canada du vingt et unième siècle.

La société que nous bâtissons pour le prochain siècle doit reconnaître aux autochtones le droit à l'autonomie gouvernementale. Nous devons leur accorder la place qui leur revient partout où nos institutions actuelles ne l'ont pas fait. Le pays est assez grand pour nous tous. Nous devons modifier notre conception du Canada pour laisser aux peuples autochtones la place qui est leur dans la société d'aujourd'hui.

intéressant les autochtones et je m'en réjouis. Je suis heureux aussi que l'Assemblée nationale du Québec ait adopté une résolution reconnaissant les droits particuliers des peuples autochtones. Nous avons en outre bénéficié des interventions fort pertinentes des deux territoires qui explorent actuellement les avenues que peut prendre l'évolution de leurs institutions politiques.

Les représentants des peuples autochtones, quant à eux, nous ont énoncé leurs préoccupations de saçon franche et loyale et leur apport aux discussions préparatoires a été des plus constructifs.

Je ne suis donc pas étonné qu'un grand nombre de participants soient prêts à envisager l'adoption d'une disposition constitutionnelle relative à l'autonomie gouvernementale. La bonne volonté et les progrès qui se manifestent depuis les derniers mois nous inspireront tout au long de nos délibérations et nous mèneront à des résultats concrets.

#### ET LES PEUPLES AUTOCHTONES RAPPORTS ENTRE LES GOUVERNEMENTS

Les leaders autochtones ici présents et ceux des divers conseils tribaux, bandes et associations représentent les descendants des premiers habitants du Canada qui, faut-il le rappeler, ont lutté pendant de très nombreuses années pour sauvegarder leur identité. Leur culture fait partie intégrante de notre patrimoine national, de ce qui nous permet de nous définir en tant que société. Cet apport culturel, il ne faut pas le négliger, mais bien plutôt le valoriser.

Leur ténacité et leur persévérance n'ont toutefois pas contribué à leur mieux-être. Je pourrais vous énumérer les nombreux indicateurs sociaux qui témoignent des disparités dont sont victimes les autochtones, notamment le chômage, le désespoir aboutissant à l'alcoolisme et au suicide et tout ce gaspillage de richesses humaines causé par un système d'enseignement inadéquat et des conditions de logement inacceptables. Mais je ne veux pas négocier le malheur. Nous connaissons assez bien les statistiques. Certains d'entre vous connaissons assez bien les statistiques. Certains d'entre vous

nous sommes engagés dans ce processus qui peut étre lent, tortueux et même frustrant. Pourtant, nous ne pouvons pas l'abandonner simplement parce que la tâche paraît insurmontable ou que des acquis pourraient être remis en question. Au contraire, nous devons redoubler d'ardeur.

En 1982, lorsque trois articles visant expressément les peuples autochtones ont été inclus dans la Loi constitution-nelle, le Canada se lançait dans une vaste entreprise, celle de procéder à des changements fondamentaux, substantiels et positifs en ce qui a trait à la situation des autochtones. En 1983, les gouvernements ont convenu d'un accord constitution-tionnel qui, notamment, accordait une protection constitution-nelle aux accords portant règlement de revendications territoriales et engageait les gouvernements, avant que ne soit apportée à la Constitution quelque modification touchant les peuples autochtones, à tenir une conférence à laquelle ceux-ci participeraient.

Bien que la Conférence de 1984 n'ait pas donné de résultats tangibles, de nouvelles bases ont été établies depuis, lors des rencontres préparatoires entre les participants et MM. Crosbie et Crombie. J'ai suivi ces rencontres avec intérêt et j'ai noté le désir de tous les participants de mener à bien cette entreprise, de soumettre des idées nouvelles, de contester des idées reçues, de tirer profit d'expériences contester des idées reçues, de tirer profit d'expériences particulières et de progresser vers un consensus.

L'Ontario, le Manitoba et la Saskatchewan ont largement contribué à faire avancer les discussions sur tous les éléments du dossier. Il convient aussi de souligner l'apport considérable des gouvernements de la Nouvelle-Écosse et du Nouveaumementale et la clarification des dispositions concernant l'égalité entre les hommes et les femmes autochtones. L'Alberta a entichi les discussions de l'expérience que lui procurent ses rapports uniques avec les Métis sous le régime de la loi qu'elle a adoptée pour améliorer leur situation, la Metis Betterment Act.

On me dit que la Colombie-Britannique, Terre-Neuve et l'Île-du-Prince-Édouard, entre autres, ont insisté sur l'importance de discussions ouvertes et exhaustives sur les questions

Sachez donc que, fidèle à sa nouvelle approche, le gouvernement fédéral ne prendra pas d'initiative inattendue, pas plus qu'il n'aura recours à des mesures de pression pour vous faire adopter des positions contraires à vos principes. Nous allons jouer franc jeu, cartes sur table.

Quand j'étais négociateur dans les conflits de travail, j'ai bien connu le sentiment de ceux qui font face, de l'autre côté de la table, aux représentants d'intérêts puissants. Mais je tiens à préciser que tel n'est pas le cas aujourd'hui, car nous sommes réunis ici pour nous attaquer ensemble à des problèmes qui nous concernent tous.

# ET NOTES HISTORIQUES

Il importe que nous envisagions de la même façon le processus qui nous a amenés ici aujourd'hui. En 1982, après des années d'efforts futiles, les Indiens, les Inuit et les Métis ont finalement convaincu les gouvernements, dans le vif du débat constitutionnel, de régler certaines questions qui douchaient profondément leur avenir propre et celui du Canada tout entier.

Vous savez, je me trouve ici non pas seulement à titre de Premier ministre, mais aussi en tant que député de la circonscription de Manicouagan qui est une des plus vastes du Canada et où habitent des Cris, des Montagnais, des Maskachef montagnais, Gaston McKenzie, qui a appuyé ma candidature à l'investiture du Parti progressiste-conservateut dans ma circonscription.

Je connais bien la situation des autochtones et les difficultés auxquelles ils font face, autant dans Manicouagan que partout ailleurs au pays. En tant que Premier ministre, il est de mon devoir de prendre les devants, de susciter des changements. C'est pourquoi J'entends ne ménager aucun effort pour mettre en place les mécanismes grâce auxquels les changements en place les mécanismes grâce auxquels les changements essentiels pourront s'opérer. C'est d'ailleurs pour cela que essentiels pourront s'opérer. C'est d'ailleurs pour cela que

#### INTRODUCTION

C'est pour moi un honneur et un devoir important que de me joindre à vous dans cette entreprise tout à fait particulière, cette Conférence des premiers ministres sur les questions constitutionnelles concernant les Inuit, les Indiens et les Métis du Canada. Etant donné qu'il s'agit de ma première participation à cette série de conférences, je tiens à vous dire comment j'entrevois cette démarche que j'estime indispensable pour le pien de notre fédération.

Ni moi, ni le nouveau gouvernement fédéral, n'avons l'intention de nous limiter à suivre les sentiers déjà battus. Il existe, J'en suis convaincu, de nouvelles possibilités à explorer ensemble et d'autres points sur lesquels nous entendre.

Au cours de nos délibérations, vous constaterez la détermination du gouvernement à mieux identifier et définir les droits des autochtones et à les protéger plus efficacement dans la Constitution. Je compte sur la bonne volonté de tous pour que nous puissions réaliser des progrès sensibles d'ici l'ajournement, demain. Je prendrai des engagements précis au nom du gouvernement fédéral, et je m'attends à ce que les provinces, les territoires et les représentants autochtones en fassent autant.

Les Canadiens veulent certainement que nos discussions soient empreintes des grandes valeurs qui ont jalonné l'histoire de notre pays, soit l'équité, la tolérance et la compréhension.

Lors de la Conférence sur l'économie à Régina, puis à la Conférence économique nationale, j'ai incité les principaux intervenants de l'économie à concevoir dorénavant comme des préoccupations communes ce qu'ils qualifiaient auparavant de conflits de juridiction. Aussi, je ne vous étonnerai pas en vous invitant tous à assumer votre juste part de responsabilité dans la recherche de nouveaux terrains d'entente.

Vous savez l'importance primordiale que j'accorde à la réconciliation nationale. Vous connaissez ma détermination à renouveler les relations fédérales-provinciales et à rétablir l'harmonie. Il y a des avantages à procéder par consensus; ils se manifestent déjà et suscitent un nouvel espoir.



BRIAN MULRONEY,

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À LA CONFÉRENCE DES OTTAWA, LES 2 ET 3 AVRIL 1985 OTTAWA, LES 2 ET 3 AVRIL 1985



# Conférence des premiers ministres

Les droits des autochtones

Ottawa, les 2 et 3 avril 1985



Notes pour l'allocution d'ouverture du très honorable Brian Mulroney, Premier ministre du Canada

# First Ministers Conference

# Conférence des premiers ministres

The Rights of Aboriginal Peoples

Les droits des autochtones

Ottawa, April 2-3, 1985

Ottawa, les 2 et 3 avril 1985

Background Notes

March 1985

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#### SOCIAL AND ECONOMIC CONDITIONS OF ABORIGINAL PEOPLES

This paper offers an overview of changing conditions, with statistics and charts on education, employment, incomes, social assistance, housing, population and human costs.

Today, many aboriginal people are poor by any measure, and this is particularly true of status Indians living in isolated areas. Economic opportunities are often just as remote as the communities themselves.

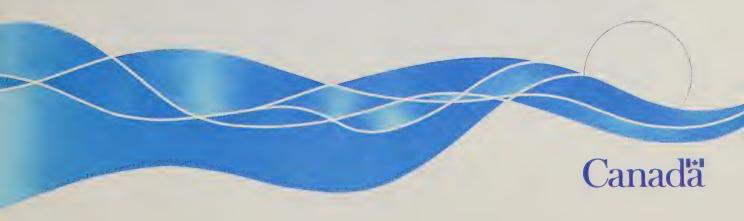
The figures in these notes describe mainly those conditions for status Indians and Inuit, about whom information is more readily available.

#### Education

The problems faced by aboriginal people as a whole are compounded by low educational levels. Statistics Canada figures show that 15 per cent of aboriginal people aged 15 and older who are not attending school full time have less than a Grade 5 education, compared with five per cent for non-aboriginals. More than four in 10 aboriginal people never attended high school, compared with two in 10 non-aboriginals (see chart I, attached).

However, Statistics Canada has noted a trend toward more education for younger age groups, and, if this continues, aboriginal people may secure better jobs in the future.

Department of Indian Affairs and Northern Development figures show that federal expenditure for elementary and secondary education was \$336 million for Indians and \$9 million for



Inuit in 1983-84. Federal expenditure for post-secondary education was \$41 million for Indians and \$130,000 for Inuit.

#### **Employment**

The lack of education helps explain high unemployment among aboriginal people.

According to the 1981 Census, half the adult aboriginal population was in the labour force compared with two-thirds of non-aboriginal peoples.

Two-thirds of aboriginal men and four out of 10 aboriginal women in urban areas were employed, compared with three-quarters of non-aboriginal men and half of non-aboriginal women. In rural areas, 45 per cent of aboriginal men and a quarter of aboriginal women had jobs; the figures for non-aboriginals were 71 per cent and 40 per cent respectively.

#### Income

For those aboriginal people able to find work, wages were relatively low, the 1981 Census found. Average income was only two-thirds that of the non-aboriginal population (see table I, attached).

In isolated communities, employment is often limited to service jobs while traditional pursuits bring in very little cash income.

### Social Assistance

Many aboriginal people are highly dependant on social assistance for the essentials of life, a fact borne out in 1981 figures from the Department of Indian Affairs and Northern Development which showed that 60 per cent of status Indians on reserves and Crown land were getting social assistance. According to the 1981 Census, the proportion of aboriginal income in the form of government transfer payments—such as Family Allowances, Old Age Security, Guaranteed Income Supplement, Unemployment Insurance and cash welfare payments—was 17.2 per cent, in contrast to 8.3 per cent in the non-aboriginal population.

#### Housing

Aboriginal people are more likely than non-aboriginal people to live in single homes but are less likely to own them. These homes are more apt than non-aboriginal homes to be crowded and to lack bathroom and modern conveniences.

Statistics Canada figures show that more than 16 per cent of aboriginal homes needed major repairs in 1981, in contrast to 6.5 per cent of non-aboriginal homes.

Current Department of Indian Affairs and Northern Development estimates are that 11,000 homes on reserves need major repairs and 10,000 new units are needed. About 3,000 new units are being built annually on reserves.

#### Population

Aboriginal women have more children on average than non-aboriginal women. The 1981 Census found that one out of four ever-married aboriginal women had given birth to six or more children, compared with one in every 13 for non-aboriginal women.

Because aboriginal people have more children and because they do not live as long as other Canadians, young people make up a much larger proportion of the aboriginal population. In 1981, the average age of aboriginal people was 23, in contrast to 32 for non-aboriginal.

#### **Human Costs**

The human costs of the economic and social conditions outlined in these notes are high -- though there are encouraging improvements in some areas.

- Aboriginal life expectancy is 10 years less than for non-aboriginal people, according to Statistics Canada.
- The infant mortality rate for status Indians and Inuit was 16 per 1,000 live births in 1981, compared with eight in the non-aboriginal population. In 1960, however, the aboriginal rate was 80 per 1,000 live births and 25 per 1,000 for non-aboriginals.
- Status Indian children in care represented six per cent of children aged up to 16 on reserves and Crown lands in 1981, compared with one per cent in the non-aboriginal population.

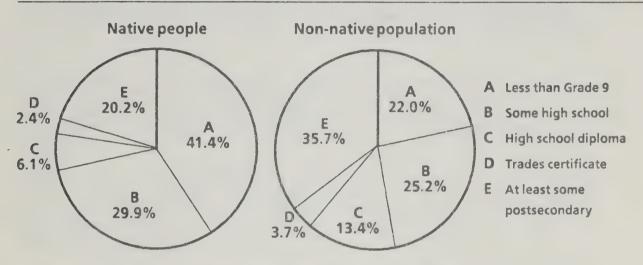
- The incidence of alcoholism among aboriginal people in 1982 was 13 times that for non-aboriginals, according to the Department of Health and Welfare.
- Solicitor General figures show that Canada's aboriginal population represented two per cent of the total Canadian population in 1984 and 10 per cent of the population in Canadian federal penitentiaries.
- Statistics Canada reports that status Indian and Inuit deaths from injury and poisonings were 200 per 100,000 population in 1981, compared with 45 for non-aboriginals. But the rate for status Indians and Inuit was down from 275 in 1973.
- Suicide among status Indians and Inuit numbered 33 per 100,000 population in 1983 and 14 among non-aboriginal people.

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# Percentage Distribution by Highest Level of Schooling Completed of Native People\* and of the Non-native Population,\* Canada, 1981



<sup>\*</sup>Population 15 years and over not attending school full-time.

Source: 1981 Census of Canada.

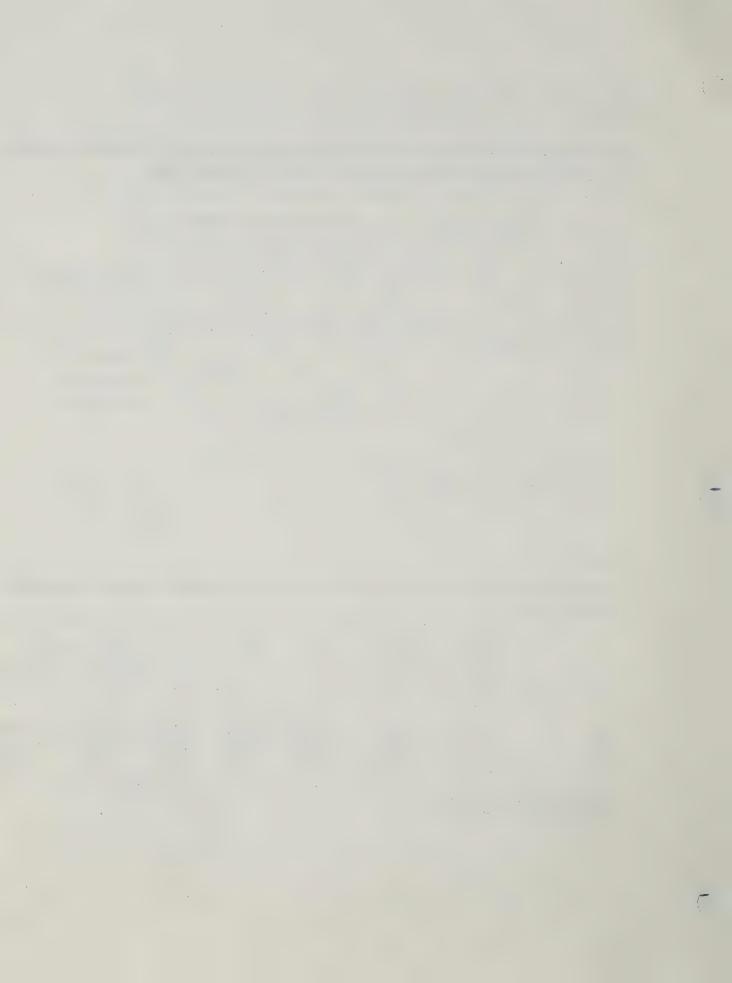
Table I

Average 1990 Income of Native Beenlet and of the Non-native I

Average 1980 Income of Native People\* and of the Non-native Population,\* Canada, 1981

	Status (on reserve)	Status (off reserve)	Non- status	Métis	Inuit	Total native people	Non- native population
	\$	\$	\$	\$	\$	\$	\$
Total Male Female	7,100 8,300 5,300	8,800 11,500 6,300	9,900 12,800 6,700	9,500 12,200 6,400	8,300 10,100 5,700	8,600 10,700 6,100	13,100 17,000 8,400

<sup>\*</sup> Population 15 years and over. Source: 1981 Census of Canada.



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## First Ministers Conference

The Rights of Aboriginal Peoples

# Conférence des premiers ministres

Les droits des autochtones

Ottawa, April 2-3, 1985

Ottawa, les 2 et 3 avril 1985

Notes documentaires

Mars 1985



#### LES CONDITIONS SOCIALES ET ÉCONOMIQUES DES AUTOCHTONES

Le présent document offre un aperçu de l'évolution de ces conditions à l'aide de statistiques et de tableaux sur le niveau d'instruction, l'emploi, les revenus, l'aide sociale, le logement, la population et les conséquences humaines.

Aujourd'hui encore, nombreux sont les autochtones qui vivent dans un état de pauvreté incontestable, notamment les Indiens inscrits vivant dans des régions isolées. Les débouchés économiques sont souvent pour eux aussi éloignés que les agglomérations où ils vivent.

Dans le présent exposé, les chiffres reflètent principalement les conditions des Indiens inscrits et des Inuit au sujet desquels des renseignements sont plus facilement accessibles.

#### Instruction

Les problèmes auxquels font face les autochtones dans leur ensemble se trouvent aggravés par leur faible niveau d'instruction. Les chiffres fournis par Statistique Canada montrent que quinze pour cent des autochtones âgés de 15 ans ou plus qui ne fréquentent pas l'école à plein temps ne se sont pas rendus à la 5<sup>e</sup> année, comparativement à cinq pour cent de la population non autochtone. Plus de quatre autochtones sur dix n'ont jamais fréquenté l'école secondaire, comparativement à deux non-autochtones sur dix (voir Graphique 1).

Toutefois, Statistique Canada a constaté que les jeunes reçoivent aujourd'hui une meilleure instruction qu'auparavant,



et si cette tendance se maintient, les autochtones accéderont peut-être à l'avenir à de meilleurs emplois.

Le gouvernement fédéral a consacré, d'après les données du ministère des Affaires indiennes et du Nord, quelque 336 millions de dollars à l'enseignement primaire et secondaire destiné aux Indiens et 9 millions dans le cas des Inuit, au cours de l'année 1983-1984. Au niveau postsecondaire, il a dépensé 41 millions de dollars pour les Indiens et 130 000 \$ pour les Inuit.

#### Emploi

Le manque d'instruction contribue à expliquer le taux élevé de chômage chez les autochtones.

Selon le recensement de 1981, la moitié seulement des autochtones adultes faisaient partie de la main-d'oeuvre active par rapport aux deux tiers des non-autochtones.

Les deux tiers des autochtones du sexe masculin et quatre autochtones sur dix du sexe féminin qui habitent les agglomérations urbaines avaient un emploi, comparativement aux trois quarts des non-autochtones du sexe masculin et à la moitié des non-autochtones du sexe féminin. Dans les régions rurales, 45 pour cent des autochtones du sexe masculin et le quart des autochtones du sexe féminin avaient des emplois; chez les non-autochtones, cette proportion atteint 71 pour cent et 40 pour cent respectivement.

#### Revenu

Les autochtones qui avaient un emploi recevaient un salaire relativement peu élevé selon le recensement de 1981. Leurs revenus moyens s'élevaient seulement aux deux tiers de ceux des non-autochtones (voir Tableau I).

Dans les centres isolés, les emplois sont souvent limités au secteur tertiaire alors que les activités traditionnelles sont peu rémunératrices.

#### Aide sociale

De nombreux autochtones dépendent dans une large mesure de l'assistance sociale pour les nécessités de la vie, comme le confirment des chiffres du ministère des Affaires indiennes et du Nord. Ces chiffres révèlent que 60 pour cent des Indiens inscrits vivant dans les réserves et sur les terres de la Couronne étaient des assistés sociaux. Selon le recensement de 1981, la fraction des revenus des autochtones provenant de paiements de transfert effectués par le gouvernement, tels les allocations familiales, la sécurité de la vieillesse, le supplément de revenu garanti, l'assurance-chômage et les prestations d'assistance sociale, s'élevait à 17,2 pour cent, comparativement à 8,3 pour cent chez les non-autochtones.

#### Logement

Une plus grande proportion d'autochtones que de nonautochtones habitent des maisons unifamiliales, mais les derniers sont plus fréquemment propriétaires que les premiers. Les maisons des autochtones sont plus souvent surpeuplées, dépourvues de salles de bains et du confort moderne que celles des non-autochtones.

Plus de 16 pour cent des maisons habitées par des autochtones avaient besoin de réparations majeures en 1981, comparativement à 6,5 pour cent chez les non-autochtones, selon Statistique Canada.

Les prévisions du ministère des Affaires indiennes et du Nord indiquent que 11 000 maisons situées dans des réserves ont besoin de réparations majeures et qu'il faut en construire 10 000 nouvelles. Environ 3 000 nouvelles maisons sont construites chaque année dans les réserves.

## Population

En moyenne, les femmes autochtones ont plus d'enfants que les non-autochtones. Le recensement de 1981 a révélé que chez les autochtones qui ont déjà été mariées, une sur quatre avait donné naissance à six enfants ou plus, par rapport à une sur treize chez les non-autochtones.

Parce que la natalité est plus forte et que l'espérance de vie est moins élevée chez les autochtones que chez les autres Canadiens, les jeunes représentent une fraction beaucoup plus considérable de la population. En 1981, l'âge moyen des autochtones était de 23 ans, et de 32 ans chez les autres Canadiens.

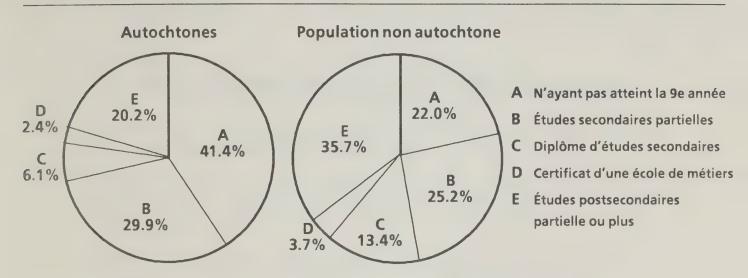
## Conséquences humaines

Les conséquences des conditions économiques et sociales que nous venons d'exposer sont graves, même si l'on perçoit certaines améliorations encourageantes.

- L'espérance de vie des autochtones est de dix ans plus courte que celle des non-autochtones, selon Statistique Canada.
- Le taux de mortalité infantile chez les Indiens inscrits et les Inuit était de seize pour mille naissances vivantes en 1981, alors qu'il était de huit pour mille dans la population non autochtone. En 1960, cependant, ces taux étaient respectivement de 80 et de 25 pour mille.
- Les enfants indiens inscrits sous garde juridique constituaient en 1981 six pour cent de l'ensemble des enfants de seize ans et moins vivant dans les réserves et sur les terres de la Couronne, alors que dans la population non autochtone, les enfants de ce groupe ne représentaient qu'un pour cent.
- En 1982, le taux d'alcoolisme chez les autochtones était, d'après le ministère de la Santé nationale et du Bien-être social, treize fois plus élevé que chez les non-autochtones.
- Les statistiques du ministère du Solliciteur général pour 1984 révèlent que les autochtones formaient deux pour cent de la population canadienne totale, mais dix pour cent de la population des détenus dans les pénitenciers fédéraux du Canada.
- Statistique Canada indique qu'en 1981, le taux de mortalité par blessure et par empoisonnement était de 200 pour 100 000 pour les Indiens inscrits et les Inuit, et de 45 pour les non-autochtones. Ce taux avait cependant baissé considérablement, de 275 qu'il était en 1973.
- Le taux de suicide enregistré en 1983 chez les Indiens inscrits et les Inuit était de 33 par 100 000 et de 14 chez les non-autochtones.
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James Moore Ministère de la Justice (613) 996-7192 Répartition en pourcentage des autochtones\* et de la population non autochtone\* selon le plus haut niveau de scolarité atteint, Canada, 1981



<sup>\*</sup>Population de 15 ans et plus ne fréquentant pas l'école à plein temps.

Source: Recensement du Canada de 1981.

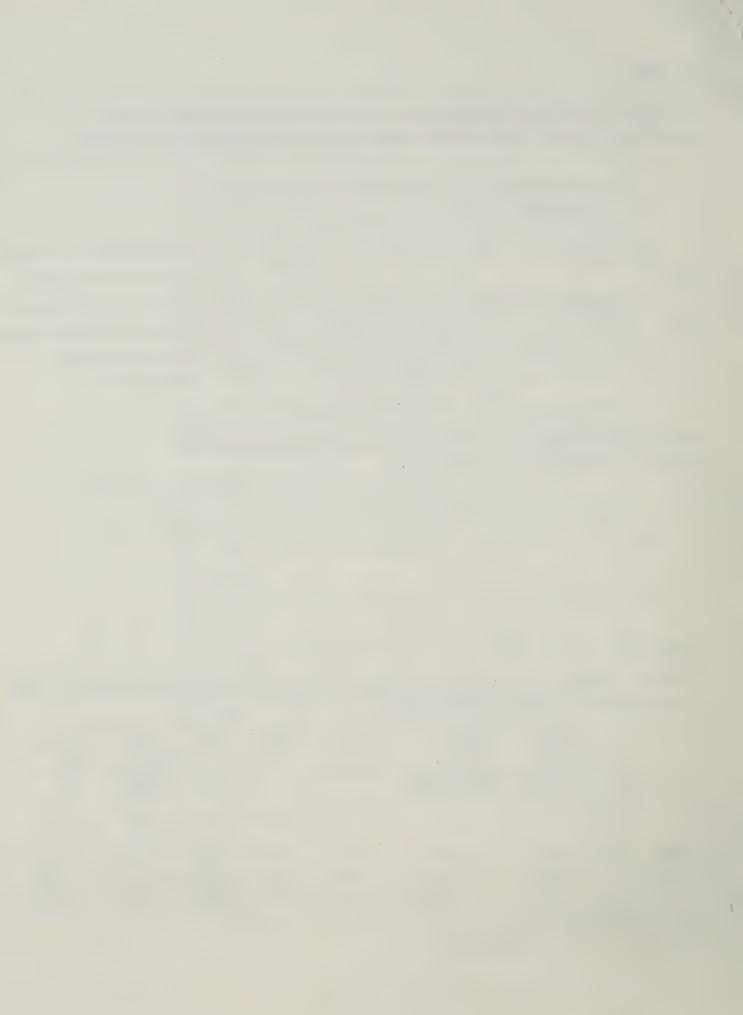
Tableau 1

Revenu moyen de la population autochtone\* et de la population non autochtone\* en 1980, Canada, 1981

	Indiens inscrits (dans les réserves)	Indiens inscrits (en dehors des réserves)	Indiens non inscrits	Métis	Inuit	Total des autochtones	Popula- tion autoch- tone
	\$	\$	\$	\$	\$	\$	\$
Total Hommes	7,100 8,300	8,800 11,500	9,900 12,800	9,500 12,200	8,300 10,100	8,600 10,700	13,100 17,000
Femmes	5,300	6,300	6,700	6,400	5,700	6,100	8,400

<sup>\*</sup> Population de 15 ans et plus.

Source: Recensement du Canada de 1981.



## First Ministers Conference

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#### FEDERAL PROGRAMS AND SERVICES FOR ABORIGINAL PEOPLES

Programs and services provided by the Government of Canada to aboriginal peoples vary by group and location.

Through treaties and the <u>Indian Act</u>, the federal government has exercised a special responsibility for persons with status within the meaning of the Indian Act, especially those who live on reserves.

On the other hand, services for Indians not resident on reserves and Métis are generally provided by provincial governments.

Services to Inuit in the Northwest Territories are provided by the territorial government, with funding from Ottawa, while the Inuit of Quebec receive services through the James Bay and Northern Quebec Agreement and the Inuit of Labrador receive services under federal-provincial agreement and joint funding.

#### Services for Status Indians

Federal programs for Indian reserve communities include direct services in the fields of education, health, social assistance, justice, housing and community infrastructure, as well as funding for cultural programs, band government and economic development. More than half the dollar value of these programs is administered by the bands themselves.

Since the mid-1960s, the proportion of Indians living off reserves has nearly doubled and by 1980 had reached about 30 per cent. Migration off reserves has been most pronounced in the large and medium-sized cities of Western Canada, particularly Winnipeg, Regina and Vancouver.



Indians living off-reserve face a complicated pattern of eligibility for government services.

The federal government has taken the view that Indians living off reserves should receive basic provincial services like any other citizens. Some provinces, however, have traditionally considered Indians to be a federal responsibility, whether living on or off reserves.

Although the provinces in practice normally provide needed services, in some cases services such as welfare and child care are only available to Indians after 12 months' continuous residence off the reserve. Migration on and off reserves for short periods makes it difficult for some Indians to gain access to needed services from federal or provincial agencies.

The federal government does provide some services directly to off-reserve Indians, such as non-insured health benefits.

Some of the programs listed below under the heading "Services for Non-Status Indians and for the Métis" are also open to Indians with status within the meaning of the Indian Act.

#### Services for Non-Status Indians and for the Métis

Non-status Indians as well as the Métis generally receive those federal and provincial services universally available to all citizens.

In addition, during the past two decades, a number of federal programs have been developed to address the special needs of aboriginal peoples, including both non-status Indians and Métis. Examples of such programs include:

- Canada Mortgage and Rural and Native Housing Program. Housing Corporation
- Employment and Employment training, job creation and labour market development.
   Native Internship Program.
- Health and Welfare Native Alcohol and Drug Abuse Program.
- Regional Industrial Federal-provincial Special ARDA and Expansion Western Northlands Agreements. Native Economic Development Fund.

Secretary of State - Native Friendship Centres.

Justice - Native Law Students Program.

- Native Courtworkers Program.

Public Service - Indigenous Participation Program.

Commission - Northern Careers Program.

#### Services for Inuit

Most services for northern Inuit are delivered by the government of the Northwest Territories, which receives over 80 per cent of its revenues from transfers from the federal government.

Similar services are provided to the Inuit of Northern Québec by the government of Québec and by the elected local government bodies established as a result of the James Bay and Northern Québec Agreement of 1975. The federal government contributes a share of the funding for these services. In Labrador, the Newfoundland government exercises primary responsibility for administering services to Inuit under a cost-sharing agreement with the federal government.

Some of the programs listed above under the heading "Services for Non-Status Indians and for the Métis" are also open to Inuit.

## Expenditure Overview

As citizens, aboriginal peoples benefit from all federal programs including such universally available programs as Family Allowances, Old Age Security and Unemployment Insurance. Benefits received by aboriginal people from these programs are not included in the figures below.

Federal expenditures on programs directed specifically or largely to Canada's aboriginal peoples amounted to more than \$2 billion in 1984/1985. Included were programs delivered by a large number of federal departments and agencies, although the Department of Indian Affairs and Northern Development accounted for almost three-quarters of the total:

# Estimated Federal Expenditures for Aboriginal People, 1984/85

Department	\$ Millions	Per Cent
Indian Affairs & Northern Development	1,893	74
Health and Welfare Regional Industrial Expansion	327 134	13 5
Canada Mortgage and Housing Corporation Secretary of State	88 50	3 2
Employment and Immigration Other departments/agencies	36 39	1 2
TOTAL	2,567	100

Most federal direct expenditures for aboriginal people are for the provision of basic services, such as education, health and social services, to status Indians living on reserve. The following table summarizes federal spending by program area:

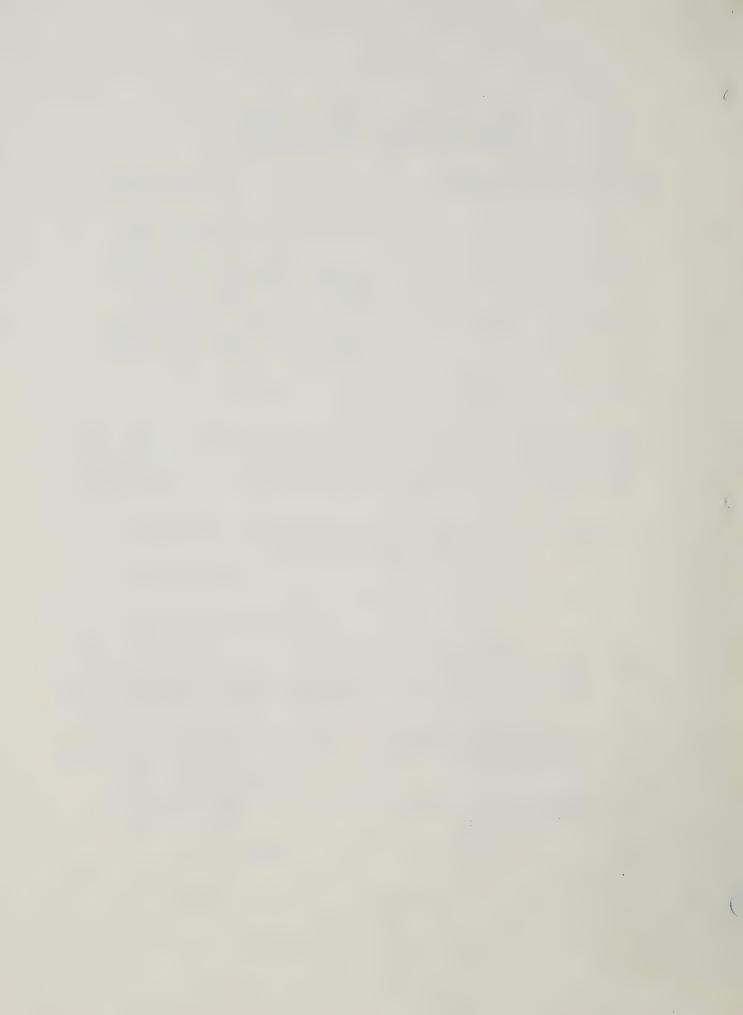
Estimated Federal Expenditures for Aboriginal People by Program Area, 1984/85

Program Area	\$ Millions	Per Cent
Housing and Community		
Infrastructure	499	19
Education	429	17
Health	322	13
Social Services	319	12
Economic and Employment		
Development	279	11
Transfers to Territorial		
Governments	249	10
Administration	167	7
Band Government	121	5
Aboriginal Claims	83	3
Culture	18	1
Miscellaneous	81	3
TOTAL	2,567	101

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#### LES PROGRAMMES ET LES SERVICES FÉDÉRAUX DESTINÉS AUX AUTOCHTONES

Les programmes et les services que le gouvernement du Canada fournit aux autochtones varient selon les groupements et les endroits.

La Loi sur les Indiens et les traités confèrent au gouvernement fédéral une responsabilité particulière à l'égard des Indiens inscrits au sens de la Loi sur les Indiens, et tout particulièrement à l'égard de ceux qui vivent dans des réserves.

Les gouvernements provinciaux fournissent généralement les services destinés aux Indiens qui vivent à l'extérieur des réserves et aux Métis.

L'administration territoriale fournit des services financés par Ottawa aux Inuit des Territoires du Nord-Ouest, tandis que les Inuit du Québec reçoivent des services en vertu de la Convention de la Baie James et du Nord québécois. Les services offerts aux Inuit du Labrador sont régis par une entente fédérale-provinciale qui prévoit un mode de financement conjoint.

## Services offerts aux Indiens inscrits

Les programmes fédéraux destinés aux collectivités indiennes qui vivent dans les réserves comprennent des services directs offerts en matière d'enseignement, de santé, d'assistance sociale, de justice, de logement et d'infrastructures communautaires, ainsi que le financement accordé au chapitre des programmes culturels, de l'administration locale et de



l'expansion économique. Les bandes elles-mêmes administrent plus de la moitié de la valeur de chaque dollar accordé au titre de ces programmes.

Depuis le milieu des années 60, la proportion des Indiens vivant hors des réserves a presque doublé et, en 1980, elle avait atteint environ 30 pour cent. Les migrations hors des réserves se font surtout vers les grandes villes et les villes moyennes de l'Ouest du Canada, notamment Winnipeg, Regina et Vancouver.

Le système d'admissibilité aux services gouvernementaux présente certaines complications pour les Indiens vivant hors des réserves.

D'après la position du gouvernement fédéral, les Indiens vivant hors des réserves devraient recevoir les services provinciaux de base comme tous les autres citoyens. Cependant, quelques provinces estiment que les Indiens relèvent du gouvernement fédéral, qu'ils vivent à l'intérieur ou à l'extérieur des réserves.

Même si, en pratique, les provinces fournissent normalement les services nécessaires, certains services comme ceux qui concernent le bien-être et la protection de l'enfance ne sont dispensés qu'aux Indiens qui ont habité hors de la réserve pendant une période continue de douze mois. Les Indiens qui passent de courtes périodes à l'extérieur de la réserve ont quelques difficultés à être admis aux services essentiels dispensés par des organismes fédéraux ou provinciaux.

Le gouvernement fédéral fournit certains services directement aux Indiens vivant hors des réserves, comme les prestations pour soins médicaux non assurés.

Quelques-uns des programmes énumérés dans la partie suivante sont également offerts aux Indiens inscrits au sens de la <u>Loi</u> sur les Indiens.

### Services offerts aux Indiens non inscrits et aux Métis

Les Indiens non inscrits et les Métis reçoivent généralement les services fédéraux et provinciaux dispensés de façon universelle à tous les citoyens.

De plus, au cours des deux dernières décennies, un certain nombre de programmes fédéraux ont été mis en place pour répondre aux besoins particuliers des peuples autochtones, y compris les Indiens non inscrits et les Métis. En voici une liste:

Société canadienne				
d'hypot logemer		et	de	
Emploi			***	

### Programme de logement rural et autochtone.

# Immigration Canada

- Formation professionnelle, création d'emplois et développement du marché du travail
- Programme interne d'emploi des autochtones.

Santé et Bien-être social Canada

Programme national de lutte contre l'abus de l'alcool et des droques chez les autochtones.

Expansion industrielle régionale

- Entente fédérale-provinciale spéciale ARDA et Ententes sur les terres septentrionales de l'Ouest.
- Fonds de développement économique des autochtones.

Secrétariat d'État

Centres d'accueil autochtones.

Justice

- Programme des études de droits pour les autochtones.
- Programme d'assistance parajudiciaire aux autochtones.

Commission de la Fonction publique

- Programme de la participation indigène.
- Programme des carrières du Grand Nord.

## Services dispensés aux Inuit

La plupart des services dispensés aux Inuit du Grand Nord sont fournis par l'administration des Territoires du Nord-Ouest, qui tire plus de 80 pour cent de ses revenus de transferts de fonds du gouvernement fédéral.

Des services semblables sont fournis aux Inuit du Nouveau-Québec par le gouvernement du Québec et par les organismes d'administration locale élus, créés par suite de la Convention de la Baie James et du Nord québécois signée en 1975. Le gouvernement fédéral finance une partie de ces services. Au Labrador, c'est au gouvernement de Terre-Neuve

"ue revient la responsabilité première de fournir des services aux Inuit en vertu d'une entente de frais partagés avec le gouvernement fédéral.

Certains des programmes énumérés dans la partie qui précède sont également offerts aux Inuit.

#### Aperçu des dépenses

En tant que citoyens, les autochtones bénéficient de tous les programmes fédéraux, y compris des programmes universels comme les allocations familiales, la pension de la Sécurité de la vieillesse et l'assurance-chômage. Les prestations reçues par les autochtones au titre de ces programmes ne sont pas comprises dans les données ci-dessous.

Les dépenses fédérales relatives aux programmes destinés spécifiquement ou de façon générale aux peuples autochtones du Canada s'élevaient à plus de 2 milliards de dollars pour 1984-1985. Cela comprend les programmes administrés par un grand nombre de ministères et d'organismes fédéraux, bien que le ministère des Affaires indiennes et du Nord représente à lui seul près des trois quarts du total.

# Prévisions concernant les dépenses fédérales consacrées aux peuples autochtones en 1984-1985

Pourcentage
74 13 5
3
2
1
2
100

Les dépenses directes du gouvernement fédéral à l'égard des Indiens inscrits sont principalement consacrées à offrir des services fondamentaux comme l'enseignement, la santé et les services sociaux à ceux qui vivent dans les réserves. Le tableau qui suit donne un aperçu, par secteur d'activité, des dépenses prévues pour 1984-1985.

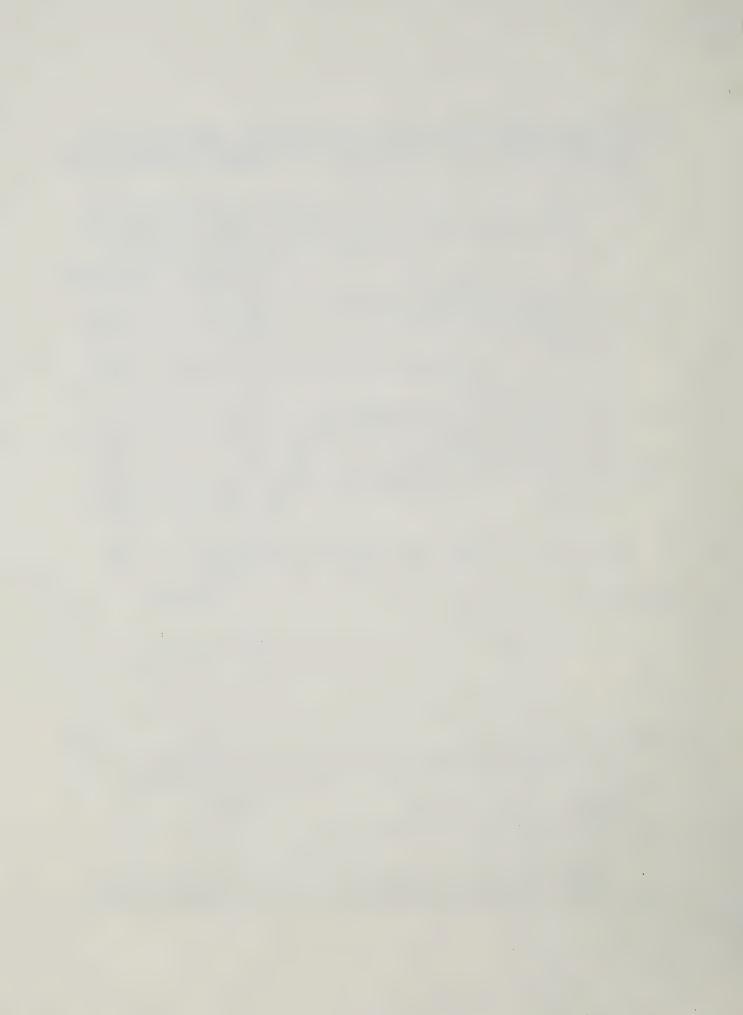
# Prévisions concernant les dépenses fédérales affectées aux Indiens par secteurs d'activités -- 1984-1985

Secteurs d'activités	en millions de dollars	Pourcentage
Logement et infrastructures communautaires	400	10
	499	19
Enseignement	429	17
Santé	322	13
Services sociaux	319	12
Emploi et expansion		
économique	279	11
Transferts aux administrations		
territoriales	249	10
Frais administratifs	167	7
Administration locale	121	5
Revendications autochtones	83	3
Culture	18	1
Divers	81	3
	****	
TOTAL	2 567	101

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# CONSTITUTIONAL AND LEGISLATIVE MILESTONES IN ABORIGINAL RIGHTS - 1763 TO 1984

Contemporary negotiation of aboriginal and treaty rights takes place against a long historical record of treaties, constitutional enactments, land claims settlements and landmark decisions of the Supreme Court of Canada.

#### Royal Proclamation of 1763

The proclamation organized Britain's newly-acquired American territories into governments or colonies.

It reserved for the use of Indians:

...all the Lands and Territories not included within the Limits of Our said Three New Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid.

#### Land Treaties: 1764-1956

The first of a large number of land treaties was signed on behalf of the Crown with an Indian tribe in 1764, the last in 1923, with additional bands adhering to some treaties until 1956.

Historically, treaties provided for the settlement of Indian lands in exchange for such benefits as reserve land, tools and cattle.



Such treaties cover the Prairies, the Mackenzie Valley, Ontario and parts of British Columbia. Principal areas not covered by treaties are most of British Columbia, the Yukon, central and northern Quebec and the central and eastern Arctic.

#### Constitution Act, 1867

Section 91(24) gave the Parliament of Canada jurisdiction over "Indians, and lands reserved for the Indians." It did not, however, define the term "Indians."

#### Indian Acts: 1876-1951

First adopted by Parliament in 1876 and last completely revised in 1951, the <u>Indian Act</u> is the major piece of federal legislation dealing with Indians. The current Act:

- Establishes an administrative and legal framework for Indians.
- Defines an Indian on the basis of ancestry and inclusion on earlier lists.

## Constitutional Recognition of the Inuit: 1939

In a decision known as "Re Eskimos," the Supreme Court of Canada ruled in April, 1939, that the term "Indians" in Section 91(24) of the Constitution Act, 1867 includes the Inuit. This ruling brought the Inuit under federal jurisdiction.

### White Paper: 1969

In 1969, the federal government issued a white paper on Indian policy, calling for repeal of the Indian Act and an end to special status for Indians. But the white paper was withdrawn in 1971 as the result of protests.

#### Calder Case: 1973

Calder involved an application by the Nishga Indians for a judicial declaration that they had aboriginal title to lands they occupied in British Columbia. The Nishga lost their case on a technicality before the Supreme Court of Canada. But the court split evenly on the question of whether aboriginal title still existed or had lapsed, leading the federal government to announce that it would:

- Negotiate settlements of comprehensive land claims -that is, claims based on unextinguished aboriginal
  title.
- Settle "specific" claims based on specific acts and omissions of the federal government relating to treaty obligations, legislative requirements and responsibilities regarding the management of Indian assets.

#### James Bay and Northern Quebec Agreement, 1975

Considered the first modern land claims settlement, this agreement involved the government of Canada, three Quebec Crown corporations, the Grand Council of the Cree, the Northern Quebec Inuit Association and the government of Quebec.

Indians and Inuit surrendered their aboriginal title in exchange for the exclusive use of 13,696 square kilometres of land together with a regime of local self-government complete with a social, cultural, economic and educational framework.

Financial compensation amounted to \$267.5 million, with the promise of \$226.3 million in additional programs.

# Constitution Act, 1982

Six provisions relate to aboriginal peoples:

- The Canadian Charter of Rights and Freedoms shall not abrogate or derogate from aboriginal, treaty or other rights or freedoms (section 25).
- Existing aboriginal and treaty rights are recognized and affirmed (subsection 35(1).
- The aboriginal peoples of Canada include Indians, Inuit and Métis (subsection 35(2).
- A First Ministers Conference would be convened within one year (subsection 37(1).
- The conference agenda would include the definition and identification of aboriginal rights; representatives of aboriginal peoples would participate in discussions on agenda items affecting them (subsection 37(2).

- Elected representatives of the Yukon and Northwest Territories governments were to be invited to participate in discussing agenda items affecting those regions (subsection 37(3).

These were supplemented by the <u>Constitution Amendment</u> Proclamation, 1983 (see below).

#### First Ministers Conference: 1983

When First Ministers met March 15-16, 1983, under the terms of section 37 of the Constitution Act, 1982, the federal government and nine provinces — with the concurrence of the four aboriginal associations and the two territorial governments that took part in the talks — agreed on a constitutional accord calling for:

- Further conferences before April 17, 1987.
- Participation of aboriginal representatives in these conferences.
- Participation of elected representatives of the governments of the Northwest Territories and the Yukon in these conferences.
- Participation of aboriginal leaders in a conference with First Ministers before any further amendment to constitutional provisions dealing with aboriginal peoples.
- Equal guarantee in the constitution of existing aboriginal and treaty rights to males and females.
- Recognition and affirmation of rights acquired through both existing and future land claims settlements as treaty rights.

#### Penner Report: 1983

The all-party Special Committee of the House of Commons on Indian Self-government was convened in 1982 to study "all legal and related institutional factors affecting the status, development and responsibilities of band governments on Indian reserves." Its reports (commonly called the Penner Report) called for:

- A new relationship with Indians, based on Indian self-government, to be entrenched in the Constitution.

- Federal legislation, pending entrenchment, to implement Indian self-government.

#### First Ministers Conference: 1984

Under the terms of the constitutional accord of 1983, First Ministers met March 8-9, 1984, with representatives of aboriginal peoples and territorial governments, to discuss aboriginal and treaty rights, equality rights, land and resources and self-government, but without reaching any final decisions.

#### Constitutional Amendment: 1984

After the Senate, the House of Commons and nine provincial legislatures endorsed the constitutional accord reached at the First Ministers Conference in 1983, it was proclaimed part of the Constitution on June 21, 1984, as the Constitution Amendment Proclamation, 1983. Its terms are described above, under the heading, "First Ministers Conference: 1983."

#### Bill C-52: 1984

In June, 1984, the federal government introduced framework legislation regarding self-government.

The bill was introduced in June, 1984, but not adopted.

# Guérin Case: 1984

The Musqueam Band of British Columbia filed a suit against the federal government involving the surrender of Indian reserve lands to the Crown for lease to a third party. In leasing the land for the Musqueam Band, the federal government did not observe the terms requested by the Indians and subsequently failed to advise them of the terms of the lease or to provide additional information required by the band.

In the judgement, for the first time, the Supreme Court ruled that the band had "a pre-existing right to their traditional lands." The Supreme Court of Canada ruled in favor of the band, holding that the Crown had, therefore, breached a fiduciary obligation to the band. The band was awarded \$10 million.

#### Bill C-31: 1985

Indian Affairs Minister David Crombie introduced legislation in Parliament on February 28, 1985, to eliminate provisions of the Indian Act which are sexually discriminatory and to provide for Indian Nation control of band membership.

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# First Ministers Conference

The Rights of Aboriginal Peoples

# Conférence des premiers ministres

Les droits des autochtones

Ottawa, April 2-3, 1985

Ottawa, les 2 et 3 avril 1985

Notes documentaires

Mars 1985

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> L'ÉVOLUTION DES DROITS CONSTITUTIONNELS ET LÉGISLATIFS DES AUTOCHTONES DE 1763 À 1984

Les négociations actuelles sur les droits des autochtones et les traités les concernant ont comme toile de fond une longue série de traités, de proclamations constitutionnelles, de règlements de revendications territoriales et de décisions marquantes de la Cour suprême du Canada.

#### Proclamation royale de 1763

Cette proclamation répartissait les territoires de l'Amérique du Nord nouvellement acquis par la Grande-Bretagne en gouvernements ou colonies.

Elle réservait aux Indiens:

...toutes les terres et tous les territoires non compris dans les limites de Nos trois gouvernements ni dans les limites du territoire concédé à la Compagnie de la baie d'Hudson, ainsi que toutes les terres et tous les territoires situés à l'ouest des sources des rivières qui de l'ouest et du nord-ouest vont se jeter dans la mer.

# Traités sur les terres: 1764-1956

Le premier d'une longue série de traités sur les terres a été signé au nom de la Couronne avec une tribu indienne en 1764, et le dernier, en 1923. Jusqu'en 1956, diverses bandes ont adhéré à certains traités.



Les traités ont toujours prévu la colonisation des terres indiennes en échange d'avantages comme des terres de réserve, des outils et du bétail.

Ils visent les Prairies, la vallée du Mackenzie, l'Ontario et certaines parties de la Colombie-Britannique. Les principales régions non touchées sont la plus grande partie de la Colombie-Britannique, le Yukon, le centre et le nord du Québec ainsi que l'Arctique central et oriental.

#### Loi constitutionnelle de 1867

Le paragraphe 91(24) donne au Parlement du Canada compétence sur les Indiens et les terres réservées aux Indiens. Le terme "Indien" n'y est toutefois pas défini.

#### Lois sur les Indiens: 1876-1951

La Loi sur les Indiens, qui a été adoptée par le Parlement en 1876 et entièrement révisée pour la dernière fois en 1951, est la plus importante loi fédérale s'appliquant aux Indiens. Sa version actuelle:

- établit un cadre administratif et juridique à l'égard des questions touchant les Indiens;
- définit un Indien en fonction de l'ascendance et de l'inscription sur une des listes antérieures.

### Reconnaissance constitutionnelle des Inuit: 1939

Dans une décision connue sous le nom "Re Eskimos", la Cour suprême du Canada a jugé, en avril 1939, que le terme "Indiens" figurant au paragraphe 91(24) de la Loi constitutionnelle de 1867 englobait les Inuit. Ce jugement a eu pour effet de placer les Inuit sous la compétence fédérale.

#### Livre blanc: 1969

En 1969, le gouvernement fédéral publiait, sur les politiques touchant les Indiens, un livre blanc qui préconisait l'abrogation de la Loi sur les Indiens ainsi que l'annulation de leur statut particulier. Cependant, il a été retiré en 1971 par suite des protestations.

#### Affaire Calder: 1973

Dans cette affaire, les Indiens Nishga ont tenté d'obtenir des tribunaux une déclaration, reconnaissant leur titre aux terres qu'ils occupaient en Colombie-Britannique. La Cour suprême du Canada les a déboutés sur une question de forme, mais elle a rendu un jugement partagé sur la question de savoir si leur titre existait bel et bien ou s'il était expiré, ce qui a amené le gouvernement fédéral à annoncer:

- qu'il négocierait des ententes concernant les revendications globales, c'est-à-dire, celles fondées sur le titre autochtone valide;
- qu'il réglerait des revendications particulières fondées sur des actes et des omissions du gouvernement fédéral relativement aux obligations découlant de traités, aux exigences législatives et aux responsabilités rattachées à l'administration des biens des Indiens.

#### Convention de la Baie-James et du Nord québécois de 1975

Cette convention, considérée comme le premier règlement des revendications territoriales de notre époque, mettait en cause le gouvernement du Canada, trois sociétés d'État québécoises, le Grand conseil des Cris, la Northern Quebec Inuit Association et le gouvernement du Québec.

Les Indiens et les Inuit ont cédé leurs titres en échange de l'usage exclusif de 13 696 kilomètres carrés de terres et d'un régime administratif autonome comportant sa propre structure sociale, culturelle et économique et en matière d'enseignement.

Par ailleurs, ils ont obtenu en compensation une somme de 267,5 millions de dollars et la promesse de 226,3 millions de dollars supplémentaires versés dans le cadre de programmes supplémentaires.

# Loi constitutionnelle de 1982

Six dispositions de cette loi visent les peuples autochtones:

La Charte canadienne des droits et libertés ne porte pas atteinte aux droits ou libertés - ancestraux, issus de traités ou autres - des peuples autochtones (article 25).

- Les droits existants ancestraux ou issus de traités des peuples autochtones du Canada sont reconnus et confirmés [paragraphe 35(1)].
- Les peuples autochtones du Canada s'entendent notamment des Indiens, des Inuit et des Métis du Canada [paragraphe 35(2)].
- Une conférence des premiers ministres sera convoquée dans moins d'un an [paragraphe 37(1)].
- Sont placées à l'ordre du jour de la conférence la détermination et la définition des droits des peuples autochtones.
- Les représentants des peuples autochtones sont invités à participer aux discussions qui les touchent [paragraphe 37(2)].
- Les représentants élus des gouvernements du Yukon et des Territoires du Nord-Ouest sont invités à participer aux travaux relatifs à toute question placée à l'ordre du jour qui intéresse ces régions [paragraphe 37(3)].

Ces dispositions sont complétées par l'Amendement de 1983 à la Constitution (voir ci-dessous).

# Conférence des premiers ministres: 1983

Lorsque les premiers ministres se sont rencontrés les 15 et 16 mars 1983, aux termes de l'article 37 de la Loi constitutionnelle de 1982, le gouvernement fédéral et neuf provinces ainsi que les autres associations d'autochtones et les deux administrations territoriales qui ont pris part aux pourparlers se sont entendus sur un accord constitutionnel prévoyant:

- la tenue d'autres conférences avant le 17 avril 1987;
- la participation de représentants des autochtones à ces conférences;
- la participation de représentants élus des administrations des Territoires du Nord-Ouest et du Yukon à ces conférences;
- la participation de dirigeants des peuples autochtones à une conférence des premiers ministres avant que soient apportés à la Constitution d'autres amendements touchant les peuples autochtones;

- l'adoption de dispositions constitutionnelles garantissant l'égalité des droits ancestraux ou issus de traités pour les femmes et les hommes;
- la reconnaissance et la confirmation, en tant que droits issus de traités, des droits acquis par le biais de règlements de revendications territoriales actuels ou futurs.

#### Rapport Penner: 1983

En août 1982, le Comité "pluripartite" spécial de la Chambre des communes sur l'autonomie gouvernementale des Indiens a reçu le mandat d'examiner tous les aspects juridiques et connexes ayant une influence sur le statut, l'évolution et les responsabilités de l'administration des bandes vivant sur les réserves. Son rapport (communément appelé le rapport Penner) préconisait:

- l'établissement de nouvelles relations avec les Indiens qui seraient fondées sur l'autonomie gouvernementale et qui seraient enchâssées dans la Constitution;
- l'adoption, en attendant l'enchâssement dans la Constitution, de dispositions législatives fédérales visant à assurer l'autonomie gouvernementale des Indiens.

# Conférence des premiers ministres: 1984

En vertu de l'accord constitutionnel de 1983, les premiers ministres ont rencontré, les 8 et 9 mars 1984, les représentants des peuples autochtones et des administrations territoriales pour discuter des droits des autochtones (ancestraux et issus de traités), des droits à l'égalité, des terres, des ressources et de l'autonomie gouvernementale, sans toutefois que des décisions définitives ne soient prises.

# Amendement constitutionnel: 1984

Une fois entérinées par le Sénat, la Chambre des communes et neuf assemblées législatives provinciales, les modalités de l'accord conclu à la Conférence des premiers ministres de 1983 ont été intégrées à la Constitution le 21 juin 1984. C'est ce qu'on désigne sous le nom d'amendement de 1983 à la Constitution. Ces modalités sont exposées ci-dessus à la rubrique "Conférence des premiers ministres: 1983".

#### Projet de loi C-52: 1984

En juin 1984, le gouvernement fédéral a présenté un projet de loi cadre concernant l'autonomie gouvernementale. Celui-ci n'a pas été adopté.

#### Affaire Guérin: 1984

La bande Musqueam, de la Colombie-Britannique, a intenté des poursuites contre le gouvernement fédéral relativement à la cession à la Couronne de terres de réserves indiennes qui devaient être louées à un tiers. En louant les terres en question pour le compte de la bande Musqueam, le gouvernement fédéral n'a pas observé les conditions exigées par les Indiens et par la suite, a omis de les informer des conditions de la location et de fournir des renseignements supplémentaires demandés par la bande.

Pour la première fois, la Cour suprême reconnaissait dans un jugement que la bande détenait ses terres en vertu d'un droit acquis. Elle a tranché en faveur de la bande, jugeant que la Couronne n'avait pas respecté ses obligations de fiduciaire. La bande a obtenu 10 millions de dollars en dommages-intérêts.

### Projet de loi C-31: 1985

Le 28 février 1985, le ministre des Affaires indiennes et du Nord, M. David Crombie, a déposé au Parlement un projet de loi visant, d'une part, à supprimer de la Loi sur les Indiens les dispositions qui permettent les distinctions fondées sur le sexe et à accorder aux nations indiennes, d'autre part, le contrôle de l'effectif des bandes.

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# First Ministers Conference

The Rights of Aboriginal Peoples

# Conférence des premiers ministres

Les droits des autochtones

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Background Notes

March 1985

#### TREATIES AND LAND CLAIMS

#### History

The interest of the aboriginal peoples in the land has been the subject of policy attention since the Europeans discovered the North American continent.

As this paper discusses, the recognition of the aboriginal peoples' interest in the land they inhabited prompted the European newcomers to address the issue in advance of orderly settlement. Treaties were entered into between the Crown and aboriginal tribes in acknowledgement of this interest. (Refer to the Appendix for a listing of major treaties.) Current land claims negotiations represent a modern effort by government to deal with the aboriginal interest in their traditional lands.

# Royal Proclamation

The best known expression of British colonial policy towards Indians is to be found in the Royal Proclamation of 1763, which organized Britain's newly-acquired American territories into four governments or colonies.

It reserved for the use of Indians lands beyond the Colony of Quebec and the Territory of the Hudson's Bay Company, and forbade British subjects from purchasing or taking possession of any of these lands without special leave from the Crown.

Peace treaties were entered into with Maritime Indian tribes during the eighteenth century. As European settlement moved west, a number of treaties covering relatively small tracts of land in what is now southern Ontario were signed with the Indians until 1840. Similar treaties respecting areas of



southern British Columbia were signed during the mid-nine-teenth century.

#### Major Historic Treaties

Pre-Confederation: The first treaties covering large areas were the two Robinson treaties of 1850, covering the north shores of Lakes Huron and Superior. In these treaties, the Indian chiefs and leaders agreed to trade Indian interest in the lands for cash benefits, annuities, and the right to occupy reserve lands. Indian rights to minerals under reserve lands and the right to hunt and fish on unoccupied Crown lands in the surrendered territory were terms of the treaties.

Post-Confederation: The Robinson treaties became the model for the post-Confederation treaties covering the rest of Ontario, the Prairie provinces, northeastern British Columbia and the Mackenzie Valley. These were negotiated between 1871 and 1930.

In each of these treaties, the Indians agreed to relinquish large areas of land for settlement in exchange for reserve lands that could be alienated only to the Crown and other benefits which varied somewhat from treaty to treaty. The benefits of education, health and social services — including a "medicine chest" to be kept by each Indian agent in one case — are contained in some treaties. Cash payments to Indians under treaty benefits called "annuities" are still a well-known event in parts of the West.

#### Modern Era: The Land Claims

The 1970s saw increased activity by aboriginal peoples in the assertion of aboriginal rights in those areas of the country where they may not yet have been extinguished, principally in sparsely-settled northern areas.

The government responded in 1973 with its "comprehensive claims" policy, under which claims to aboriginal title to various tracts of land were accepted for negotiation, with the objective of securing agreement by aboriginal groups to the exchange of their aboriginal interest in the land in return for specific rights and benefits.

Aboriginal rights, which derive from aboriginal title to the land, have never been fully articulated by a Canadian court and there is continuing debate concerning their content. One aim of the claims settlement process is to convert these undefined aboriginal rights into specific and well-defined rights.

#### Specific Land Claims

As the policy of negotiating settlements of comprehensive land claims policy was announced, the federal government also introduced a "specific" land claims policy. This policy was intended to remedy specific acts and omissions of the federal government relating to treaty obligations, legislative requirements and responsibilities regarding the management of Indian assets.

Specific claims have been launched by aboriginal people where there is deemed to be a lawful obligation owing them on the part of the Crown. Because specific land claims are not based upon unextinguished aboriginal rights and deal with specific acts, they are handled independently of comprehensive land claims and are far more numerous than comprehensive claims.

#### Comprehensive Land Claims

Under current comprehensive claims policy, aboriginal rights are exchanged -- as a result of a negotiated bargain struck between native people, the federal and provincial governments -- for substantial rights and benefits which are received by the native people. Benefits in modern claims settlements typically include large cash payments, the setting aside of tracts of land for settlement and for the traditional occupations -- hunting, fishing and trapping -- as well as a variety of protections for the social, cultural, economic and educational framework of the group.

#### James Bay and Northern Quebec Agreement

For example, in the first of the modern settlements, the James Bay and Northern Quebec Agreement of 1975, the 10,000 beneficiaries received compensation for extinguishment amounting to \$267.5 million in cash and new additional programs in the amount of \$226.3 million (in 1982 value), for a total per capita compensation package of \$49,380.

A total land area of 13,696 sq. km., or 13.7 sq. km. per person, was set aside for the exclusive use and occupancy of the beneficiaries, with additional lands being set aside exclusively for aboriginal hunting, fishing and trapping.

Implementation of this agreement calls for considerable co-operation among federal, provincial and local governments working together on various boards and committees. In many instances, local government powers, and powers over health and education matters, are exercised by native people within areas

under their control. Economic development programs are funded. Income security programs are in place for Cree and Inuit who wish to pursue traditional ways.

By entering into and implementing such agreements, the federal government both discharges its social policy responsibilities to native people and also clears the remaining Crown land in the land claim area of any cloud that may exist as a result of aboriginal interest, thereby freeing it for settlement, exploration or other purposes.

#### Constitutional Amendments

Both aboriginal and treaty rights are recognized and affirmed by section 35(1) of the Constitution Act, 1982. As a result of the constitutional amendments of June, 1984, section 35(3) has been added to the Constitution. It provides that rights acquired under land claims agreements are to be regarded as treaties and thereby receive the protection of section 35(1).

#### Naskapi and Inuvialuit Land Claims

In addition to the James Bay and Northern Quebec Agreement, two other recent land claims agreements have been concluded. The first of these is with the Naskapi Indians of Schefferville, Quebec (the Northeastern Quebec Agreement of 1978). The second is the one concluded with the Inuvialuit, the Inuit group of the Western Arctic area of the Northwest Territories, in 1984 and is often referred to as the COPE (Committee for Original People's Entitlement) agreement.

Each of the three agreements contains a stipulation that Parliament is to pass legislation ratifying the agreement and extinguishing the claimant groups' aboriginal title. Such legislation has, in fact, been passed by Parliament, so that the terms of these agreements now have the force of law.

#### Outstanding Comprehensive Claims

Six other comprehensive claims have been under negotiation and are not yet settled:

- The claim of the Nishga Indians to an area of northwestern British Columbia.
- The claim of the Dene (Indian) Nation and Métis Association of the Northwest Territories to the Mackenzie Valley.

- The claim of Tungavik Federation of Nunavut (Inuit) to the eastern and central Arctic.
- The claim of the Council of Yukon Indians to most of the Yukon.
- The claim of the Conseil Attikamek Montagnais (Indians) to an area along the north shore of the Gulf of St. Lawrence.
- The claim of the Labrador Inuit Association to an area of Labrador.

Other outstanding claims, mainly in British Columbia, are considered valid but are not yet under negotiation.

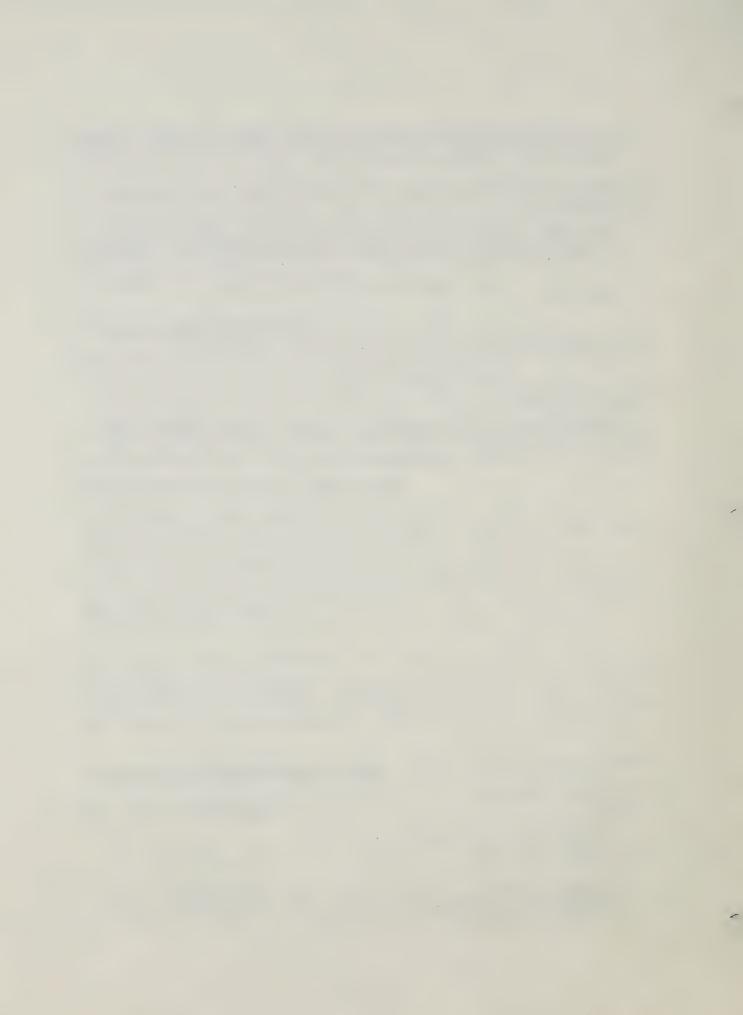
#### Claims Review

In keeping with a recommendation of the Penner Report, the Minister of Indian Affairs announced in the autumn of 1984 that he will develop recommendations for a new claims policy.

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#### APPENDIX

#### Chronology of Major Treaties since 1850:

1850 Robinson Superior Treaty - with Ojibewa Indians of Lake Superior Robinson Huron Treaty - with Ojibewa Indians of Lake Huron 1871 Treaties 1 and 2 - with Chippewa and Cree Indians - southern Manitoba and southeastern Saskatchewan Treaty 3 ("Northwest Angle Treaty") - with 1873 Saulteaux Tribe of Ojibbeway Indians northwestern Ontario/southeastern Manitoba 1874 Treaty 4 - with Cree and Saulteaux Tribes of Indians - southern Saskatchewan and portions of Manitoba and Alberta 1875 Treaty 5 - with Saulteaux and Swampy Cree Tribes of Indians - central and northern Manitoba further adhesions, northern Manitoba, in 1908 1876 Treaty 6 - with Plain and Wood Cree and other tribes of Indians - central Saskatchewan and Alberta 1877 Treaty 7 - with Blackfeet and other Indian tribes - southern Alberta 1899 Treaty 8 - with Cree, Beaver and Chipewayan Indians - northern Alberta, northwestern Saskatchewan, northeastern British Columbia, southeastern Mackenzie Valley Treaty 9 ("James Bay [Ontario] Treaty") - with 1905. Ojibeway and Cree Indians - central northern 1906 Ontario - further adhesions, northern Ontario, in 1929 and 1930 1906 Treaty 10 - with Chipewayan, Cree and other Indians - northern Saskatchewan and a portion of Alberta 1908 Adhesions to Treaty 5 (see above)

1921	-	Treaty 11 - with Slave, Dogrib, Loucheux, Hare and other Indians - Mackenzie Valley and southeastern portion of the Yukon
1923	-	Chippewa Treaty; Mississauga Treaty - portions of Ontario east and south of Georgian Bay
1956	-	Last adhesion to a treaty (Treaty 6; see above)
1975	-	James Bay and Northern Quebec Agreement - with Cree Indians and Inuit of Quebec - northwestern and northern Quebec
1978	-	Northeastern Quebec Agreement - with Naskapi Indians of Schefferville, Que portion of north central Quebec
1984	-	Inuvialuit Final Agreement - with Inuit of Western Arctic - northern portion of western Northwest Territories

# First Ministers Conference

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LES TRAITÉS ET LES REVENDICATIONS TERRITORIALES

#### Historique

L'intérêt des autochtones à l'égard des terres retient l'attention des autorités gouvernementales depuis que le continent nord-américain a été découvert par les Européens.

Comme en témoigne le présent document, la reconnaissance de l'attachement de ces premiers occupants à leurs terres a incité les arrivants d'Europe à examiner la question avant de procéder à une colonisation méthodique. Les traités que la Couronne et les tribus autochtones ont signés confirment ce fait. (Voir en annexe la liste des principaux traités.) Les négociations actuelles sur les revendications territoriales témoignent de l'effort que déploie encore aujourd'hui le gouvernement en raison de l'attachement des autochtones à leur patrimoine.

#### Proclamation royale

L'expression la mieux connue de la politique coloniale britannique concernant les Indiens se trouve dans la Proclamation royale de 1763, qui prévoyait l'organisation des colonies américaines nouvellement acquises par la Grande-Bretagne en quatre colonies ou gouvernements distincts.

La Proclamation réservait aux Indiens l'occupation des terres situées au-delà de la colonie de Québec et du territoire concédé à la Compagnie de la baie d'Hudson. Elle défendait aux sujets britanniques d'acheter ou de posséder les terres réservées sans avoir au préalable obtenu la permission de la Couronne.



Des traités de paix ont été conclus avec des tribus indiennes des Maritimes au cours du XVIII<sup>e</sup> siècle. En se déplaçant vers l'Ouest, les arrivants européens ont signé jusqu'en 1840 avec les Indiens un certain nombre de traités concernant des fonds de terre d'une superficie relativement limitée (le sud de l'Ontario actuel). D'autres traités analogues, touchant des territoires situés dans le sud de la Colombie-Britannique, ont été conclus au milieu du XIX<sup>e</sup> siècle.

#### Les grands traités

Avant la Confédération: Les premiers traités portant sur de vastes territoires ont été les deux traités Robinson de 1850, lesquels visaient les rives nord des lacs Huron et Supérieur. Dans ces traités, les chefs et les dirigeants indiens ont consenti à échanger leurs terres contre de l'argent comptant, des annuités et le droit d'occuper des terres de réserve. Le droit des Indiens aux ressources minières de ces réserves et le droit de chasser et de pêcher sur les terres inoccupées de la Couronne qui se trouvent dans le territoire cédé étaient prévus dans ces traités.

Après la Confédération: Les traités Robinson ont servi de modèle aux traités postérieurs à la Confédération qui visaient le reste de l'Ontario, les provinces des Prairies, le nord-est de la Colombie-Britannique et la vallée du Mackenzie. Ils ont été négociés entre 1871 et 1930.

Dans chacun de ces traités, les Indiens ont accepté de renoncer à de larges superficies de terre aux fins de colonisation en échange de réserves qui ne pouvaient être cédées qu'à la Couronne et d'autres avantages présentant des variantes d'un traité à l'autre. Certains traités couvraient l'enseignement et les services médicaux et sociaux (y compris, dans un cas, les "médicaments" que chaque représentant indien gardait dans un coffre). Les paiements en espèces, ou "annuités", versés aux Indiens en vertu d'un traité sont encore largement répandus dans certaines parties de l'Ouest.

# Les revendications territoriales aujourd'hui

Dans les années 1970, les autochtones ont recommencé à faire valoir leurs droits concernant les territoires à l'égard desquels ils n'avaient peut-être pas encore été abolis, en particulier dans les régions peu peuplées du Nord.

Le gouvernement y a répondu en 1973 par sa politique sur les "revendications générales", en vertu de laquelle il a accepté de négocier les prétentions des autochtones à de vastes terres afin d'en obtenir la cession contre certains droits et avantages.

Les droits des autochtones, qui découlent du fait qu'ils ont été les premiers occupants de ces terres, n'ont jamais été pleinement énoncés par une cour de justice canadienne et ils demeurent controversés. Le processus de règlement des revendications vise notamment à mieux définir ces droits.

#### Revendications particulières

Lorsqu'il a annoncé sa politique sur le règlement négocié des revendications territoriales globales, le gouvernement fédéral a adopté également une politique sur les revendications particulières. Cette dernière visait à corriger certains de ses actes ou omissions concernant les obligations énoncées dans les traités, les exigences législatives et les responsabilités touchant la gestion des actifs des Indiens.

Les peuples autochtones ont formulé des revendications spéciales dans les cas où une obligation légale est censée incomber à la Couronne. Comme certaines de ces revendications ne reposent pas sur des droits préservés et portent sur des dispositions précises, elles ne sont pas traitées dans le cadre de la politique sur les revendications générales et sont beaucoup plus nombreuses que ces dernières.

#### Revendications globales

Aux termes de la politique actuelle sur les revendications globales, le titre autochtone peut être échangé à la suite d'une entente négociée entre eux et les gouvernements fédéral et provinciaux contre d'autres droits et avantages importants. Parmi les avantages qui leur sont offerts aujourd'hui, signalons des paiements substantiels en argent et des fonds de terre où ils peuvent s'établir et s'adonner à leurs occupations traditionnelles (la chasse, la pêche et le piégeage), ainsi que diverses garanties sur les plans social, culturel, économique et de l'enseignement.

# Convention de la Baie James et du Nord québécois

Par exemple, la première entente contemporaine relative aux autochtones, soit la Convention de la Baie James et du Nord québécois de 1975, a attribué à 10 000 bénéficiaires un montant s'élevant à 267,5 millions de dollars pour compenser l'extinction de leur titre et de nouveaux programmes évalués

à 226,3 millions de dollars (en dollars de 1982), ce qui donne 49 380 \$ par tête.

Un territoire couvrant une superficie totale de 13 696 km carrés, ou 13,7 km carrés par personne, a été réservé à l'usage exclusif des bénéficiaires, et d'autres terres l'ont été également pour la chasse, la pêche et le piégeage.

La mise en application de la convention exige un grand effort de collaboration entre les gouvernements fédéral, provinciaux et locaux, qui doivent travailler ensemble au sein de divers conseils et comités. Dans plusieurs cas, les pouvoirs d'administration locale, notamment en matière de santé et d'enseignement, sont exercés par les autochtones dans les territoires qui relèvent de leur compétence. Les programmes d'expansion économique sont subventionnés. Des programmes de sécurité du revenu ont été adoptés pour les Cris et les Inuit qui veulent rester fidèles à leurs traditions.

Au moyen de conventions de ce genre, le gouvernement fédéral s'acquitte de ses responsabilités sociales envers les autochtones en même temps qu'il dégage les autres terres de la Couronne de toute revendication de leur part, les réservant au peuplement, à l'exploration et à d'autres usages.

#### Amendements constitutionnels

Les droits ancestraux ou issus de traités ont été reconnus et consolidés par le paragraphe 35(1) de la Loi constitutionnelle de 1982. À la suite des amendements apportés en juin 1984, le paragraphe 35(3) a été ajouté à la Constitution. Il prévoit que les droits acquis en vertu des conventions sur les revendications territoriales seront considérés au même titre que ceux attribués par traité et par conséquent, ils seront protégés par les dispositions du paragraphe 35(1).

# Revendications territoriales des Naskapis et des Inuvialuit

Outre la Convention de la Baie James et du Nord québécois, deux autres conventions récentes sur les revendications territoriales ont été signées. La première concerne les Naskapis de Schefferville (Québec); il s'agit de la Convention du Nord québécois de 1978. La seconde a été conclue en 1984 avec les Inuvialuit, groupe d'Inuit des Territoires du Nord-Ouest qui vit dans la partie occidentale de l'Arctique; elle est mieux connue sous le nom de convention du CEDA (Comité d'étude des droits des autochtones).

Chacune des trois conventions prescrit que le Parlement doit adopter des dispositions législatives la ratifiant et abolissant le titre des groupes visés. En fait, ces dispositions ont été adoptées par le Parlement, et les termes de ces conventions ont maintenant force de loi.

#### Revendications globales en instance

Six autres revendications globales font encore l'objet de négociations:

- celle d'une partie du Nord-Ouest de la Colombie-Britannique par les Nishgas;
- celle de la vallée du Mackenzie par l'Association des Dénés (Indiens) et des Métis des Territoires du Nord-Ouest;
- celle de l'Arctique de l'Est et du Centre par la Fédération Tungavik du Nunavut (Inuit);
- celle de presque tout le Yukon par le Conseil des Indiens du Yukon;
- celle d'un territoire longeant la côte nord du Golfe du Saint-Laurent par le Conseil Attikamek Montagnais (Indiens);
- celle d'une partie du Labrador par l'Association des Inuit du Labrador.

D'autres revendications en instance, principalement en Colombie-Britannique, sont jugées fondées, mais elles ne font pas encore l'objet de négociations.

#### Examen des revendications

Tel que recommandé par le rapport Penner, le ministre des Affaires indiennes a annoncé l'automne dernier qu'il présenterait des recommandations visant l'établissement d'une nouvelle politique en matière de revendications.

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### ANNEXE

# Chronologie des principaux traités signés depuis 1850:

1850	-	Traité Robinson du lac Supérieur - avec les Ojibways du lac Supérieur
	-	Traité Robinson du lac Huron - avec les Ojibways du lac Huron
1871	-	Traités n <sup>OS</sup> 1 et 2 - avec les Chippewas et les Cris du sud du Manitoba et du sud-est de la Saskatchewan
1873	-	Traité nº 3 ("Traité signé à l'extrémité nord-ouest du lac des Bois") - avec les Ojibways (Saulteux) - Nord-ouest de l'Ontario/ Sud-est du Manitoba
1874	-	Traité nº 4 - avec les tribus des Cris et des Saulteux - Sud de la Saskatchewan et certaines régions du Manitoba et de l'Alberta
1875	-	Traité nº 5 - avec les tribus des Saulteux et des Cris des Marais - Centre et nord du Manitoba - Autres adhésions dans le nord du Manitoba en 1908
1876	-	Traité nº 6 - avec les Cris de la Plaine et des Bois et d'autres tribus indiennes - Centre de la Saskatchewan et de l'Alberta
1877	-	Traité nº 7 - avec les Pieds-Noirs et d'autres tribus indiennes - Sud de l'Alberta
1899	-	Traité nº 8 - avec les Cris, les Castors et les Chipewyans - Nord de l'Alberta, nord-ouest de la Saskatchewan, nord-est de la Colombie- Britannique, sud-est de la vallée du Mackenzie (T.NO.)
1905, 1906	-	Traité nº 9 ("Traité de la Baie James avec les Ojibways et les Cris - Centre-nord de l'Ontario - Autres adhésions dans le nord de l'Ontario, en 1929 et 1930
1906	•••	Traité nº 10 - avec les Chipewyans, les Cris et d'autres Indiens - Nord de la Saskatchewan et une partie de l'Alberta

1908	world	Adhésions au Traité nº 5 (voir ci-dessus)
1921	_	Traité nº 11 - avec les Esclaves, les Dogribs, les Loucheux, les Hares et d'autres Indiens - Partie de la vallée du Mackenzie située dans les Territoires du Nord-Ouest, et sud-est du Yukon
1923	******	Traité des Chippewas; Traité de Mississauga - Régions de l'Ontario situées à l'est et au sud de la baie Georgienne
1956		Dernière adhésion à un traité (voir le traité n° 6 ci-dessus)
1975		Convention de la Baie James et du Nord québécois - avec les Cris et les Inuit du Québec - Nord-ouest et nord du Québec
1978	-	Convention du Nord-est québécois - avec les Naskapis de Schefferville (Québec) - Partie nord-centre du Québec
1984	-	Convention définitive des Inuvialuit - avec les Inuit de l'ouest de l'Arctique - partie nord de l'ouest des T.NO.



# First Ministers Conference

The Rights of Aboriginal Peoples

# Conférence des premiers ministres

Les droits des autochtones

Ottawa, April 2-3, 1985

Ottawa, les 2 et 3 avril 1985

Background Notes

CA1 Z2 - C52 March 1985

#### ABORIGINAL PEOPLES AND CONSTITUTIONAL REFORM - 1978 TO 1985

June, 1978

Federal government introduces Bill C-60 and a white paper entitled "A Time for Action," both outlining plans for a comprehensive overhaul of the Constitution and setting "full respect for native rights" as one of the principles of constitutional renewal.

February 5-6, 1979

First Ministers Conference agrees to proposed meetings between federal government, the provinces and aboriginal leaders, to explore aboriginal concerns.

April 29, 1980

Federal government reaffirms direct involvement by Indian leaders in discussion of constitutional changes directly affecting native peoples. From a federal perspective, this includes aboriginal and treaty rights, internal native self-government, native representation in Parliament and responsibilities of federal and provincial governments for services to native people.

Federal funding announced for constitutional work by national aboriginal associations.

June 9, 1980

First Ministers Conference. Federal government proposes continued involvement of native leaders in constitutional changes which directly affect aboriginal peoples.

August, 1980

Aboriginal leaders meet with representatives of government to prepare for September's First Ministers Conference on the Constitution.



September, 1980

First Ministers Conference. Three national aboriginal organizations attend as observers.

December, 1980

National Indian Brotherhood, Inuit Committee on National Issues and Native Council of Canada make representations to Special Parliamentary Committee on the Constitution, supported by 14 provincial or regional Indian, Inuit and Métis organizations.

February 13, 1981

Final report of the Special Parliamentary Committee on the Constitution recommends inclusion of the following specific provisions in the Constitution:

- Aboriginal rights and freedoms not affected by Charter of Rights and Freedoms (section 25).
- Rights of aboriginal peoples of Canada (section 34).
- Participation of aboriginal peoples in constitutional conferences (subsection 36.(2).
- Matters requiring amendment under general amendment procedure (subsection 55(c).

November 5, 1981

As part of agreement with the provinces, aboriginal and treaty rights section of constitutional resolution is withdrawn.

November 26, 1981

With provincial concurrence, "existing" aboriginal and treaty rights restored to constitutional resolution.

April 17, 1982

Constitution Act, 1982 proclaimed.

January 31-February 1, 1983 Federal and provincial ministers meet with aboriginal and territorial representatives to prepare for First Ministers Conference.

February 28-March 1, 1983

Further meetings between federal and provincial ministers and aboriginal and territorial representatives to prepare for First Ministers Conference.

March, 1983

Métis National Council invited to join other three aboriginal associations at constitutional table.

March 15-16, 1983

First Ministers Conference. Federal government, nine provinces, aboriginal leaders and territorial representatives sign accord to amend the Constitution as follows:

 Constitutional recognition of rights under land claims agreements.

 Guarantee of aboriginal and treaty rights equally to men and women.

- Commitment to consult aboriginal people prior to certain constitutional changes affecting them.

Future aboriginal constitutional conferences.

March 17, 1983

Office of Aboriginal and Constitutional Affairs (OACA) set up to coordinate federal activities mandated by accord and to liaise with provincial, territorial and aboriginal participants in preparation for future First Ministers Conferences.

May 31-December 2, 1983 Parliament and nine provincial legislatures pass resolution endorsing constitutional accord.

November 2-3, 1983

Ministers and aboriginal associations agree on agenda and schedule of preparatory meetings for 1984 First Ministers Conference.

November, 1983

Report of the Special Committee of the House of Commons on Indian Self-government (commonly called the Penner Report), tabled in House of Commons, recommends a new constitutional relationship with Indians based on Indian self-government, calls for federal legislation to implement Indian self-government.

January 25-26, 1984

Federal and provincial ministers meet aboriginal associations in Yellowknife to discuss agenda for March First Ministers Conference.

Federal and provincial ministers hold February 13-14, further meetings with aboriginal associa-1984 tions in Toronto, in preparation for First Ministers Conference. First Ministers Conference. Participants March 8-9, 1984 discuss equality rights, aboriginal title and aboriginal rights, treaties and treaty rights, land and resources, selfgovernment. Conference ends without agreement on any issue. June 21, 1984 Proclamation of constitutional amendments arising out of the March, 1983, accord. December 17-18, Federal and provincial ministers meet with 1984 aboriginal leaders to prepare for First Ministers Conference in April, 1985. Federal and provincial officials meet to February 21-22, make preparations for First Ministers 1985 Conference. March 11-12, Federal and provincial ministers meet with 1985 aboriginal leaders to continue preparations for First Ministers Conference.

First Ministers Conference.

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April 2-3, 1985

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# First Ministers Conference

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Ottawa, les 2 et 3 avril 1985

Notes documentaires

Mars 1985

CA1 72 -C52

#### LES AUTOCHTONES ET LA RÉFORME CONSTITUTIONNELLE DE 1978 À 1985

Juin 1978

Le gouvernement fédéral dépose le projet de loi C-60 et un livre blanc intitulé "Le temps d'agir"; ces deux documents exposent des plans en vue d'une révision complète de la Constitution et ils énoncent l'un des principes du renouvellement constitutionnel, à savoir le "plein respect des droits des autochtones".

Les 5-6 février 1979 La Conférence des premiers ministres accepte la proposition de tenir des réunions entre le gouvernement fédéral, les provinces et les chefs autochtones en vue d'analyser les préoccupations des autochtones.

Le 29 avril 1980 Le gouvernement fédéral réaffirme la participation directe des chefs indiens aux débats portant sur les modifications constitutionnelles qui touchent directement les autochtones. Sur le plan fédéral, cela comprend les droits ancestraux ou issus de traités, l'autonomie des autochtones au niveau local, la représentation des autochtones au Parlement et les responsabilités des gouvernements fédéral et provinciaux à l'égard des services destinés aux autochtones.

Le gouvernement fédéral annonce sa contribution financière aux travaux constitutionnels effectués par des associations autochtones nationales.



Le 9 juin 1980 Conférence des premiers ministres. Le gouvernement fédéral envisage la participation permanente des chefs autochtones quant aux modifications constitutionnelles qui touchent directement les autochtones.

Août 1980

Les chefs autochtones rencontrent les représentants du gouvernement pour se préparer à la Conférence des premiers ministres de septembre sur la Constitution.

Septembre 1980

Conférence des premiers ministres. Trois organisations autochtones nationales y assistent à titre d'observateurs.

Décembre 1980

La Fraternité des Indiens du Canada, le Comité inuit sur les Affaires nationales et le Conseil des autochtones du Canada, appuyés par quatorze associations provinciales ou régionales d'Indiens, d'Inuit et de Métis, présentent des observations au Comité parlementaire spécial sur la Constitution.

Le 13 février 1981 Le Comité parlementaire spécial sur la Constitution recommande, dans son rapport final, l'inscription, dans la Constitution, des dispositions suivantes:

- non-altération des droits et libertés des autochtones par la Charte (article 25);
- droits des peuples autochtones du Canada (article 34);
- participation des autochtones aux conférences constitutionnelles (paragraphe 36(2);
- questions nécessitant une modification selon la procédure générale de modification (alinéa 55c).

Le 5 novembre 1981 Retrait de l'article relatif aux droits ancestraux ou issus de traités de la résolution constitutionnelle, comme partie de l'entente avec les provinces.

Le 26 novembre 1981 Rétablissement, dans la résolution constitutionnelle, des droits "existants" ancestraux ou issus de traités, avec l'accord des provinces. Le 17 avril 1982

Promulgation de la Loi constitutionnelle de 1982.

Du 31 janvier au 1er février 1983

Les ministres fédéraux et provinciaux se réunissent avec les représentants autochtones et territoriaux pour préparer la Conférence des premiers ministres.

au 1er mars 1983

Du 28 février Autres réunions entre les ministres fédéraux et provinciaux et les représentants autochtones et territoriaux pour préparer la Conférence des premiers ministres.

Mars 1983

Invitation du Ralliement national des Métis à se joindre à trois autres associations autochtones à la table des négociations constitutionnelles.

Les 15 et 16 mars 1983 Conférence des premiers ministres. Le gouvernement fédéral, neuf provinces, les chefs autochtones et les représentants territoriaux signent un accord visant à modifier la Constitution comme suit:

- reconnaissance constitutionnelle des droits découlant des ententes sur les revendications territoriales;
- garantie des mêmes droits ancestraux ou issus de traités pour les hommes et les femmes;
- engagement à consulter les autochtones avant l'adoption de certaines modifications constitutionnelles les concernant:
- tenue de conférences constitutionnelles futures visant les autochtones.

Le 17 mars 1983

Le Bureau des Affaires constitutionnelles autochtones (BACA) s'organise afin de coordonner les activités fédérales mandatées par voie d'accord et d'établir la liaison avec les participants provinciaux, territoriaux et autochtones pour préparer les futures conférences des premiers ministres.

Du 31 mai au 2 décembre 1983

Le Parlement et neuf assemblées législatives provinciales adoptent une résolution sanctionnant l'accord constitutionnel.

Les 2 et 3 novembre 1983 Les ministres et les associations autochtones s'entendent sur l'ordre du jour et l'horaire des réunions préparatoires à la Conférence des premiers ministres de 1984.

Novembre 1983

Le rapport du Comité spécial de la Chambre des communes sur l'autonomie politique des Indiens (communément appelé le rapport Penner), déposé à la Chambre des communes, recommande une nouvelle relation avec les Indiens, basée sur l'autonomie gouvernementale des Indiens, et suggère l'adoption d'une législation fédérale en vue de la réalisation de cette autonomie.

Les 25 et 26 janvier 1984 Les ministres fédéraux et provinciaux rencontrent les associations autochtones à Yellowknife pour discuter de l'ordre du jour de la Conférence des premiers ministres prévue pour le mois de mars.

Les 13 et 14 février 1984 Les ministres fédéraux et provinciaux tiennent d'autres réunions avec les associations autochtones à Toronto pour préparer la Conférence des premiers ministres.

Les 8 et 9 mars 1984

Conférence des premiers ministres. Les participants discutent des sujets suivants: l'égalité des droits, le titre autochtone et les droits ancestraux, les traités et les droits issus de traités, les terres et les ressources, et l'autonomie au niveau local.

La Conférence prend fin sans qu'il y ait entente sur aucune question.

Le 21 juin 1984 Entrée en vigueur des modifications constitutionnelles résultant de l'accord de mars 1983.

Les 17 et 18 décembre 1984 Les ministres fédéraux et provinciaux se réunissent avec les chefs autochtones pour se préparer à la Conférence des premiers ministres prévue pour avril 1985.

Les 21 et 22 février 1985 Les représentants fédéraux et provinciaux se réunissent pour préparer la Conférence des premiers ministres.

Les 11 et 12 mars 1985 Les ministres fédéraux et provinciaux se réunissent avec les chefs autochtones pour continuer de se préparer à la Conférence des premiers ministres.

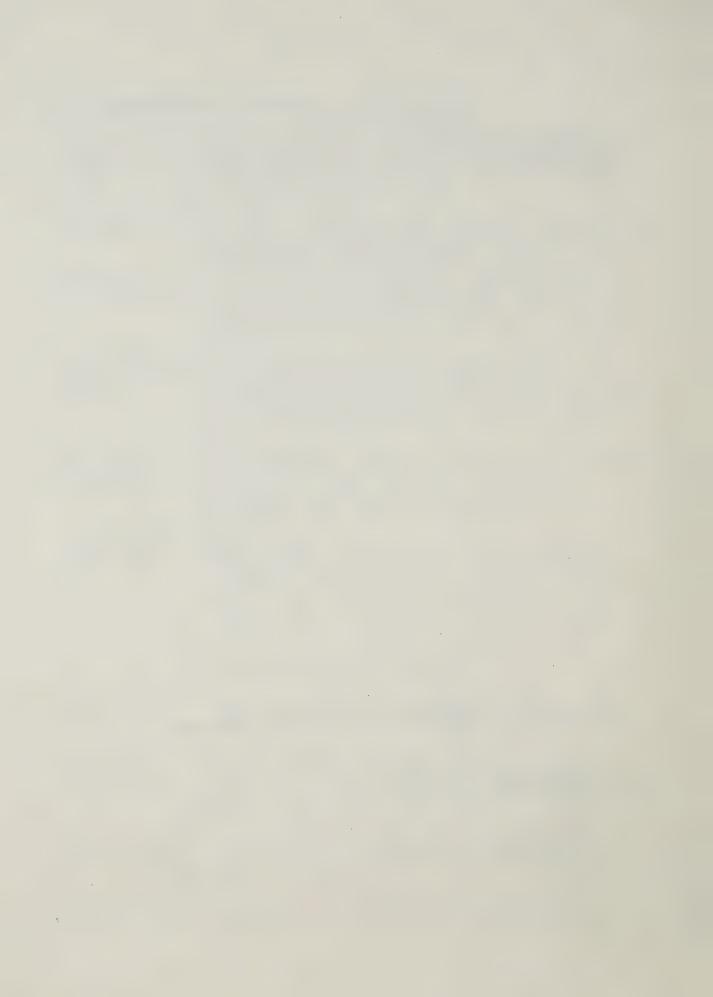
Les 2 et 3 avril 1985

Conférence des premiers ministres.

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## First Ministers Conference

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Ottawa, les 2 et 3 avril 1985

Background Notes

March 1985

CA1 Z2 -C52

#### REMOVAL OF DISCRIMINATION FROM THE INDIAN ACT

Various provisions of the <u>Indian Act</u> regarding status within the meaning of the <u>Act</u> are discriminatory and outmoded. These sections would likely conflict with the equality rights guaranteed in section 15(1) of the <u>Constitution Act</u>, 1982, which comes into force April 17, 1985. They may also contravene international covenants, such as the U.N. <u>Covenant on Civil and Political Rights</u>, which Canada has signed.

Some provisions of the <u>Indian Act</u> discriminate on the basis of sex. For example, Indian women who marry non-Indians lose their status and band membership, while Indian men who marry non-Indians retain these rights, and confer them on their wives and children.

Other sections of the Act which provide for voluntary enfranchisement (giving up of status) are outmoded and discriminatory. It is also doubtful that all individuals who were enfranchised under these provisions were treated fairly. For example, some had to give up their status in order to enlist in the Canadian Armed Forces, or to get a job or join a profession.

Indian Affairs Minister David Crombie introduced legislation in Parliament on February 28, 1985, to eliminate provisions of the Indian Act which are sexually discriminatory and to provide for Indian Nation control of band membership.

In addition, rights would be restored to the approximately 22,000 people now alive who lost their rights as a result of sexual discrimination or unfair enfranchisement. It is estimated that together these people have about 46,000 living first-generation descendants.



The current system for the determination of status and band membership is dominated by the federal government. This domination prevents bands from determining their own membership and is inconsistent with the movement towards Indian self-government.

## Proposed Amendments

The proposed amendments are designed to resolve the issues noted above, in a way which is fair both to those who suffered discrimination in the past and to existing band members. The basic principles to be implemented are:

- 1. The <u>Indian Act</u> will be brought into accord with the equality rights guaranteed by section 15 of the <u>Canadian Charter of Rights and Freedoms</u> by treating men and women equally.
- 2. Persons who directly lost Indian status through sexual discrimination or as a result of certain types of enfranchisement will be eligible for federal registration of their status and band membership.
- 3. Bands will be able, at their option, to determine their own band membership.
- 4. Children of the persons included in #2 above will be eligible for federal registration as Indians within the meaning of the Indian Act.
- 5. In the future the federal government will be responsible only for the determination of status if a band decides to determine its membership. (Currently the federal government determines status and membership.)
- 6. Eligibility for status within the meaning of the <u>Indian</u>
  Act will generally depend on having at least one registered Indian parent.
- 7. The outmoded concept of "enfranchisement" will be replaced by the simple right of individuals to give up their Indian status if they so wish.

## Restoration of Band Membership and Indian Status

Under the proposed amendments it is estimated that about 22,000 people will be eligible for restoration of status and band membership. Approximately 46,000 first-generation

descendants of these people will be eligible to be registered to status. It is not possible to know for sure in advance how many of the eligible population will actually apply for restoration or first-time registration.

The minor children of people who will have their status and band membership restored will be entitled to reside with their parents on reserve. It is expected that many bands will give membership to these children. The actual opportunity to reside on reserve will be subject to the availability of adequate housing and other facilities as is the present situation.

Individuals who were registered as Indians and band members and subsequently lost these rights due to discrimination or unfair enfranchisement under the Indian Act will be eligible for restoration of status and band membership. This includes:

- i) Women who were deleted from the Register upon marriage to a non-Indian - (paragraph 12(1)(b) and section 14).
- ii) Children of women in i) who were deleted from the Register with them.
- iii) Individuals deleted from the Register at the age of majority because their mother and paternal grandmother were not Canadian Indians by birth -(paragraph 12(1)(a)(iv).
  - iv) Illegitimate children of Indian women who were
     deleted from the Register upon proof of non-Indian
     paternity (subsection 12(2).
    - v) Persons who voluntarily enfranchised in order to: enlist in the Armed Forces, receive a university degree, enter the clergy, or to obtain or maintain a job.
  - vi) The spouse and children of persons in iv) who were enfranchised with them.

(Note: The references above are to the present Act. It is stipulated, however, that those individuals who lost status for the same reasons under earlier versions of the Act will also be eligible for reinstatement.)

First-generation descendants of those eligible for restoration (as noted above) will be eligible for first-time registration of Indian status.

People wishing to have status and band membership restored or seeking first-time registration of status will be required to apply to the Department of Indian Affairs.

They will be asked to provide sufficient information to assist in confirming their eligibility in accordance with the criteria set out in the revised Indian Act. Restoration of rights or first-time registration of status will be effective immediately on acceptance by the Registrar that the applicant is eligible. In most cases the process should be completed in a matter of weeks, although processing time may depend on the rate at which applications are received.

## Future Registration of Status

It is proposed that in future Indian status under the Indian Act will be determined by the federally-appointed Registrar in accordance with non-discriminatory registration criteria.

The current regime for federal registration of status and band membership (sections 11 and 12 of the <u>Indian Act</u>) would be replaced by new provisions dealing only with status under the <u>Act</u>. Eligibility for registration under the <u>Indian Act</u> would be as follows:

(a) Those registered or entitled to be registered when the amendments come into force.

Members of bands which may be created in the future.

Those who lost status through discrimination or unfair enfranchisement in the past.

Persons both of whose parents are included in (a) or (b).

(b) Persons one of whose parents is included in (a).

According to this plan, persons in (a) can pass on their status no matter whom they marry. Persons in (b) can do so only if they marry someone who is also registered.

## Band Determination of Membership

The proposed amendments would enable bands to determine their own membership. Under the present Act, registration of status automatically confers band membership on an individual. The membership power would be broad, subject only to:

- (a) Approval by a majority of band electors of the assumption of membership control and of membership rules.
- (b) Protection of the acquired rights of existing band members or those who are eligible to have their band membership restored.

Bands will be able to establish their own criteria for eligibility to become a band member. The federal government will have no role in this process. It is expected that many bands will also establish local appeal processes as part of their membership codes.

During the first two years or until a band adopts its own membership code, the only persons eligible to be added to the band membership lists would be children born after the amendments come into effect, both of whose parents were already members of the same band.

For bands which do not opt to exercise this power, membership will be determined and administered by the federal government. In such cases, Indian status will automatically confer band membership as is the present situation. In the case of bands which do not act within two years to assume control of their membership, the federal government will assume control. First-generation descendants of those restored to band membership would then become band members automatically. Bands could still take control of their membership at a later time. Bands that manage their own membership may return this responsibility to the federal government at any time, with the approval of a majority of the band electors.

## Impact on Federal Funding for Status Indians and Bands

The government of Canada funds a broad range of programs and services for individual Indians with status within the meaning of the Indian Act. People who have their status and band membership restored or are eligible for first-time registration as a result of the proposed amendments will be fully entitled to benefit from these programs, in accordance with existing program criteria and priorities. Restoration of status and first-time registration will not have a detrimental impact on the quality or availability of programs and services for existing individual Indians and Indian bands.

The new funding requirements resulting from the amendments cannot be determined ahead of time. They depend on such factors as how many people apply for status under the <u>Indian</u> Act; how many people decide to return to reserves; the

particular needs of such people for programs such as education, health, welfare and housing; and when people decide to return. It is anticipated that likely no more than approximately 7,000-14,000 (10 per cent to 20 per cent of people directly eligible for band membership and their first-generation descendants) will return to reserves. This would occur over a number of years.

## Adjustments to Program Funding

Individual programs -- such as welfare, education, post-secondary assistance and health services -- will be automatically adjusted, as is current practice, to provide for increases in the number of people requiring services. This will ensure that all Indians with status within the meaning of the Indian Act have an equal entitlement to such programs. The existing criteria for program funding will not be altered.

Funding for community programs such as housing and infrastructure depends on particular community characteristics and needs, such as geographic location and the current state of housing stock, which vary from community to community. Funding allocations are also based on the overall availability of funds as well as expenditure priorities established by each community. Increased demand for community-based programs resulting from people being restored to band membership will be taken into account in adjusting program levels. The objective will be to ensure that the overall situation of a community regarding its housing, infrastructure, school facilities and other community services will not become worse because of integration.

Most on-reserve programs are currently administered directly by bands. DIAND will maintain close contact with bands to ensure that funding is adjusted in accordance with changing needs and circumstances, taking account of the availability of funds. This will help to ensure a smooth process.

The introduction of individuals into a community will be managed by bands in accordance with their established priorities and management practices. For example, new band members will likely not be given any special preference regarding the allocation of housing. If there is a waiting list for housing, as is currently the case on many reserves, new band members would be placed on that list in a way similar to other band members seeking housing. In some cases this may mean that the actual

return to reserve will have to be delayed until community resources can be adequately adjusted to accommodate the increased population.

#### Lands

On many reserves there is only a limited amount of land available for such essential purposes as housing, infrastructure and schools. Restoration of band membership may result in further pressure on the land base in these communities. DIAND currently provides funds to expand reserves to meet essential needs. Requests resulting from restoration of band membership rights will be considered, using the current criteria. Increases in funding for additions to reserves will be considered, as required, to provide for possible increases in the amount of land required as a result of the amendments.

The objective of the government is to ensure that people restored to status can enjoy the full range of programs and services to which they are entitled. This will be accomplished without harming the current situation in which individual Indians and communities find themselves.

## Historical Background

Historically, Indian status and band membership have normally derived from one's father or husband according to the provisions of the Indian Act.

In the Lavell case (1973), Jeannette Lavell contended that the equality provisions in the Canadian Bill of Rights rendered paragraph 12(1)(b) of the Indian Act invalid. The Supreme Court of Canada found that the Bill of Rights did not invalidate paragraph 12(1)(b).

Since that time, however, pressure to remove sexual discrimination from the Indian Act has been building.

## International Considerations

In July, 1981, the United Nations Committee on Human Rights found in the Sandra Lovelace case that Canada was in contravention of Section 27, the Covenant on Civil and Political Rights, since the Indian Act prevented some Indian women from enjoying their culture in community with the bands into which they were born. Since that time, other similar

cases have been referred to the United Nations Committee on Human Rights, and similar rulings can be anticipated unless the Indian Act is amended.

In addition, Canada has ratified the <u>International Convention</u> on the Elimination of All Forms of <u>Discrimination against</u> Women, which provides further impetus for adopting the proposed amendments.

## The Charter of Rights and Freedoms

Subsection 15(1) of the Constitution Act, 1982, a key part of the Canadian Charter of Rights and Freedoms, guarantees equality between men and women before the law. The Indian Act should, therefore, be amended to bring it into conformity with the Charter by April 17, 1985, when section 15 comes into force.

## Previous Parliamentary Consideration of Issue

In September, 1982, the House of Commons Sub-Committee on Indian Women and the Indian Act recommended that:

- (a) No one should lose or gain status or band membership as a result of marriage.
- (b) Children having at least one Indian parent should be entitled to status under the <u>Indian Act</u> and band membership.
- (c) Women who lost their status under the <u>Indian Act</u> and band membership have these restored along with their first-generation children.

This Committee was reconstituted as the Special Committee on Indian Self-government, and their report ("Penner Report," November, 1983) emphasized the right of each Indian Nation government to determine its membership. The committee recommended the use of a general list as a means of recognizing the Indian status of individuals not included in the membership of Indian nations.

The last attempt to resolve this issue, Bill C-47, failed. Although the bill passed in the House of Commons on June 29, 1984, the last sitting day of the last Parliament, unanimous

consent to deal with it in the Senate that day was denied. Thus Bill C-47 died on the Senate Order Paper with the dissolution of Parliament for the election.

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## **First Ministers** Conference

The Rights of Aboriginal Peoples

## Conférence des premiers ministres

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Ottawa, April 2-3, 1985

Ottawa, les 2 et 3 avril 1985

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## - C52 LA SUPPRESSION DES DISPOSITIONS DISCRIMINATOIRES DANS LA LOI SUR LES INDIENS

Diverses dispositions de la Loi sur les Indiens qui visent la question du statut aux termes de la Loi sont discriminatoires et dépassées. Elles ne sont probablement pas conformes au paragraphe 15(1) de la Loi constitutionnelle de 1982 qui garantit l'égalité de tous les Canadiens devant la loi. Ce paragraphe entrera en vigueur le 17 avril 1985. De plus, ces dispositions contreviennent peut-être à certains pactes internationaux, tel le Pacte international relatif aux droits civils et politiques des Nations Unies, dont le Canada est l'un des signataires.

Certaines dispositions de la Loi sur les Indiens établissent une discrimination fondée sur le sexe. Ainsi, lorsqu'une Indienne épouse un non-Indien, elle perd son statut et son appartenance à la bande, mais lorsqu'un Indien épouse une non-Indienne, il conserve ses droits et les transmet à son épouse et à ses enfants.

D'autres articles de la Loi, tel celui portant sur l'émancipation volontaire (renonciation au statut), sont dépassés et discriminatoires. Il est peu probable que les personnes émancipées en vertu de ces articles aient été traitées avec justice; certaines ont dû en effet renoncer à leur statut pour s'enqager dans les Forces armées canadiennes, obtenir un emploi ou faire partie d'un corps professionnel.

Le 28 février dernier, le ministre des Affaires indiennes, M. David Crombie, a déposé devant le Parlement un projet de loi visant, d'une part, à éliminer les dispositions de la Loi sur les Indiens établissant des distinctions fondées sur le sexe, et d'autre part, à accorder aux nations indiennes le pouvoir de déterminer qui sera membre des bandes.



De plus, les droits de quelque 22 000 personnes ayant été dépossédées par suite des dispositions discriminatoires de la Loi ou d'une émancipation "involontaire" seraient rétablis. Pour ces deux groupes, on dénombre environ 46 000 enfants (première génération).

Le système actuel de l'inscription est administré par le gouvernement fédéral, mais ce système empêche les bandes de déterminer leur effectif et va à l'encontre de l'évolution vers l'autonomie des Indiens.

## Modifications proposées

Les modifications proposées ont été conçues pour mettre fin en toute justice aux problèmes susmentionnés; elles visent tant les victimes d'une discrimination passée que les membres actuels des bandes. Il est envisagé d'appliquer les principes fondamentaux suivants:

- 1. La Loi sur les Indiens sera modifiée afin de la rendre conforme aux dispositions de l'article 15 de la Charte canadienne des droits et libertés et de mettre fin à une discrimination fondée sur le sexe; ces dispositions garantissent l'égalité de tous devant la loi.
- 2. Les personnes ayant directement perdu leur statut en raison de distinctions fondées sur le sexe ou d'une émancipation involontaire seront admissibles à l'inscription telle que régie par le gouvernement fédéral.
- 3. Les bandes indiennes pourront, si elles le veulent, déterminer elles-mêmes leur effectif.
- 4. Les enfants des personnes visées au paragraphe 2 seront inscrits auprès du gouvernement fédéral à titre d'Indiens au sens de la Loi sur les Indiens.
- 5. À l'avenir, le gouvernement fédéral sera seulement chargé d'accorder le statut dans le cas où une bande choisit de déterminer l'effectif (actuellement, le gouvernement fédéral détermine le statut et l'effectif).
- 6. Les personnes dont au moins un des parents est un Indien au sens de la Loi sur les Indiens seront admissibles à l'inscription.
- 7. Le principe dépassé de l'"émancipation" sera remplacé par le droit d'une personne de renoncer à son statut, si elle le désire.

## Réintégration - statut et appartenance à une bande

En vertu des modifications proposées, environ 22 000 personnes seront admissibles à la réintégration - statut et appartenance à une bande. Environ 46 000 enfants (première génération) pourraient être inscrits à titre d'Indien. Il n'est pas possible de savoir, à l'heure actuelle, combien demanderont à être réintégrés dans leurs droits ou à être inscrits pour la première fois.

Les enfants mineurs des personnes réintégrées pourront demeurer dans la réserve avec leurs parents. Il est prévu qu'un grand nombre de bandes accepteront ces enfants au sein de leur effectif. La possibilité pour les parents et leurs enfants de demeurer dans la réserve dépendra du nombre de logements et des autres installations disponibles, et ce, en fonction de la situation actuelle.

Les personnes ayant perdu leurs droits en raison de discrimination ou d'une émancipation involontaire en vertu de la Loi sur les Indiens pourront être réintégrées. Il s'agit entre autres:

- i) des femmes dont le nom a été radié du Registre par suite d'un mariage avec un non-Indien (alinéa 12(1)b) et article 14);
- ii) des enfants des femmes visées au paragraphe i) dont le nom a été rayé du Registre en même temps que celui de la mère;
- iii) des personnes dont le nom a été radié du Registre à leur majorité parce que leur mère et leur grand-mère paternelle n'étaient pas indiennes de naissance (sous-alinéa 12(1)a)(iv));
  - iv) des enfants illégitimes nés d'Indiennes et dont le nom a été radié du Registre lorsqu'il a été prouvé que leur père n'était pas un Indien (paragraphe 12(2));
  - v) des personnes ayant volontairement demandé l'émancipation pour s'engager dans les Forces armées canadiennes, obtenir un diplôme universitaire, entrer en religion ou obtenir ou conserver un emploi;
  - vi) de l'épouse et des enfants, émancipés eux aussi, des personnes visées au paragraphe iv).

(Nota: les articles, paragraphes et alinéas mentionnés ci-dessus sont ceux de la version de la Loi actuellement en vigueur. Il est cependant stipulé que les personnes ayant perdu leur statut pour les mêmes raisons en vertu de versions antérieures de la Loi pourront également être réintégrées dans leurs droits.)

Les enfants de la première génération nés des personnes admissibles à la réintégration (voir ce qui précède) seront admissibles à l'inscription.

Les personnes désirant être réintégrées ou voulant être inscrites pour une première fois devront en faire la demande auprès du ministère des Affaires indiennes et du Nord.

Elles devront fournir suffisamment de renseignements pour aider le Ministère à confirmer leur admissibilité en vertu des critères précisés dans la version révisée de la Loi sur les Indiens. La réintégration ou l'inscription pour la première fois prendra effet dès que le Registraire aura confirmé l'admissibilité du candidat. Dans la plupart des cas, cette démarche ne devrait pas durer plus de quelques semaines, bien que le temps nécessaire au traitement des demandes dépende du rythme auquel elles seront reçues.

## Inscription future des Indiens

Il est proposé qu'à l'avenir, le Registraire, nommé par le gouvernement fédéral, détermine selon des critères non discriminatoires, les personnes ayant droit à l'inscription en vertu de la Loi sur les Indiens.

Le régime actuel d'inscription (articles 11 et 12 de la <u>Loi</u> <u>sur les Indiens</u>) serait remplacé par de nouvelles dispositions ne portant que sur le statut en vertu de la <u>Loi</u>. Dorénavant, seraient donc admissibles à l'inscription:

a) les personnes inscrites ou celles ayant le droit de l'être au moment de l'entrée en vigueur des modifications;

les membres de toute bande pouvant être créée ultérieurement;

les personnes ayant perdu leur statut en raison de discrimination ou par suite d'une émancipation "involontaire";

les personnes dont les deux parents sont visés au paragraphe a) ou b);

b) les personnes dont un parent est visé au paragraphe a).

Selon ce schéma, les personnes dont il est question au paragraphe a) peuvent transmettre leur statut, quel que soit celui de leur conjoint. Les personnes visées au paragraphe b) ne peuvent transmettre leur statut que si elles épousent une personne également inscrite.

## Contrôle de l'effectif par la bande

Les modifications proposées permettraient aux bandes de déterminer elles-mêmes leur effectif. En vertu de la Loi actuelle, le droit à l'inscription confère automatiquement le droit d'appartenance à une bande. Aussi le pouvoir relié à l'inscription serait-il assez souple, sous réserve des conditions suivantes:

- a) l'approbation, par la majorité des électeurs de la bande, du principe du contrôle de l'effectif et de l'établissement d'un code d'inscription;
- b) la protection des droits acquis, pour les membres déjà inscrits ou pour les personnes admissibles à l'inscription.

Les bandes pourront établir elles-mêmes leurs critères d'appartenance et le gouvernement fédéral ne jouera aucun rôle dans cette démarche. On prévoit qu'un grand nombre de bandes établiront un processus local d'appel dans le cadre de leur code d'inscription.

Au cours des deux premières années suivant l'adoption du projet de loi ou jusqu'à l'adoption par la bande de son propre code d'inscription, les seules personnes admissibles aux listes d'inscription seraient les enfants nés après la date d'entrée en vigueur des modifications de la Loi dont les deux parents seraient déjà membres de la même bande.

Pour les bandes qui choisiront de ne pas exercer ce pouvoir, l'inscription relèvera alors de la compétence du gouvernement fédéral. Dans ce cas, le fait d'être Indien inscrit conférera automatiquement le droit d'appartenance à une bande, tel que cela existe à l'heure actuelle. Si, dans les deux années suivant l'entrée en vigueur du nouveau régime, la bande ne prend aucune mesure pour contrôler son effectif, le gouvernement fédéral se chargera de le faire. Les enfants

(première génération) des personnes réintégrées dans une bande deviendront automatiquement membres de cette bande. Les bandes pourraient encore opter pour le contrôle de leur effectif à une date ultérieure. Les bandes qui choisissent de déterminer leur effectif auront la possibilité, par la suite, de remettre ce domaine de compétence au gouvernement fédéral, à condition d'avoir l'accord de la majorité des électeurs de la bande.

## Financement - répercussions des modifications

Le gouvernement du Canada finance une vaste gamme de programmes et de services à l'intention des Indiens dont le statut est reconnu par la Loi sur les Indiens. Les personnes réintégrées dans leurs droits ou celles admissibles à l'inscription pour la première fois en vertu des modifications proposées pourront bénéficier complètement de ces programmes conformément aux critères et aux priorités établis. La réintégration et l'inscription pour la première fois n'auront pas de répercussions néfastes sur la qualité ou la disponibilité des programmes et des services actuellement offerts aux Indiens et aux bandes.

Il est impossible de prévoir dès maintenant les besoins de financement qui découleront de ces modifications. Ces besoins dépendent de divers facteurs comme le nombre de personnes qui demanderont à être réintégrées dans leurs droits en vertu de la Loi sur les Indiens, du nombre de personnes qui décideront de retourner vivre dans les réserves, des demandes particulières de ces personnes pour les programmes dans divers domaines comme l'enseignement, la santé, le bien-être et le logement, et de la date à laquelle ces personnes décideront de retourner vivre dans la réserve. Il est prévu que de 7 000 à 14 000 personnes au plus (de 10 à 20 pour cent des personnes admissibles à l'inscription) décideront de retourner vivre dans la réserve. Cela pourrait s'échelonner sur un certain nombre d'années.

## Relèvement du financement des programmes

Le financement des programmes qui s'adressent aux particuliers, comme le bien-être social, l'enseignement, l'aide au titre de l'enseignement postsecondaire et les services de santé, sera automatiquement relevé afin de tenir compte de l'augmentation du nombre de bénéficiaires. Cette mesure permettra à tous les Indiens dont le statut est reconnu par la Loi sur les Indiens de profiter de façon équitable de ces programmes. Les

critères actuels relatifs au financement des programmes ne seront pas modifiés.

Le financement des programmes destinés aux collectivités, comme le logement et l'infrastructure, est lié à des caractéristiques et à des besoins particuliers comme la situation géographique et la demande de logements; ces facteurs varient d'une collectivité à l'autre. financement accordé dépendra de la disponibilité des fonds, ainsi que des priorités établies par chaque collectivité. Il faudra cependant tenir compte, au moment de relever les niveaux de financements, de la demande pour des programmes réalisés localement, en raison du nombre de personnes ayant réintégré la bande. Il faudra s'assurer que la situation d'ensemble d'une collectivité donnée, au chapitre du logement, de l'infrastructure, des installations scolaires et des autres services, ne se détériore pas en raison de ce retour dans les réserves.

La plupart des programmes dispensés dans les réserves sont, à l'heure actuelle, directement administrés par les bandes. Le ministère des Affaires indiennes et du Nord canadien continuera d'entretenir des relations étroites avec les bandes afin de s'assurer que le niveau de financement est relevé en fonction des besoins et de la situation, compte tenu des fonds disponibles; cette démarche devrait faciliter le processus d'intégration.

Les bandes veilleront à accueillir les personnes dans la collectivité conformément aux priorités et aux méthodes de gestion établies. Ainsi, il est fort probable que les nouveaux membres d'une bande ne bénéficient d'aucun traitement préférentiel dans le domaine du logement. S'il existe une liste d'attente pour obtenir un logement, comme c'est actuellement le cas dans beaucoup de réserves, les nouveaux venus seront inscrits sur la liste tout comme les autres personnes en quête de logement. Toutefois, cela pourrait entraîner un délai quant au retour dans la réserve, et ce, jusqu'à ce que les ressources de la bande aient été relevées pour faire face à cette augmentation de la population.

#### Terres

Dans un grand nombre de réserves, il reste peu de terres disponibles, même pour des secteurs essentiels comme le logement, l'installation de l'infrastructure et les écoles. Le phénomène de la réintégration pourrait donc exercer des pressions indues à cet égard. Le Ministère accorde actuellement des fonds, selon les cas, pour agrandir le territoire des réserves afin de répondre aux besoins essentiels. Les demandes résultant de cette réintégration seront par conséquent considérées en fonction des critères actuels. Le financement destiné à agrandir les réserves sera relevé au besoin pour tenir compte des augmentations possibles de superficie devenues nécessaires à la suite des modifications apportées à la Loi sur les Indiens.

L'objectif du gouvernement est de permettre aux personnes réintégrées dans leurs droits, de bénéficier de toute la gamme des programmes et des services auxquels elles ont droit. Cela devrait se faire sans que la situation des Indiens et des communautés indiennes n'en souffre.

## Historique

Auparavant, le statut et l'appartenance à la bande résultaient normalement, en vertu de la Loi sur les Indiens, du statut du père ou du mari.

Lors de l'affaire Lavell en 1973, Jeannette Lavell alléguait que les dispositions sur l'égalité contenues dans la Déclaration canadienne des droits invalidaient l'alinéa 12(1)b) de la Loi sur les Indiens. Cependant la Cour suprême du Canada a statué que la Déclaration canadienne des droits n'invalidait pas cet alinéa.

Depuis ce jugement, des pressions de plus en plus fortes ont néanmoins été exercées en vue de supprimer de la Loi sur les Indiens les dispositions établissant une discrimination fondée sur le sexe.

## Considérations internationales

En juillet 1981, le Comité des Nations Unies sur les droits de la personne déclarait que, dans l'affaire Sandra Lovelace, le Canada contrevenait aux dispositions de l'article 27 du Pacte international relatif aux droits civils et politiques, puisque la Loi sur les Indiens empêchait certaines Indiennes de jouir de leur culture et de vivre dans leur bande d'origine.

Depuis, des cas semblables ont été soumis au Comité et l'on s'attend à des jugements similaires, si la Loi sur les Indiens n'est pas modifiée.

Enfin, le Canada a ratifié la Convention sur l'élimination de toutes formes de discrimination à l'égard des femmes; cette

démarche a incité davantage à préparer les modifications proposées.

## Charte canadienne des droits et libertés

Le paragraphe 15(1) de la Loi constitutionnelle de 1982, élément clé de la Charte canadienne des droits et libertés, garantit l'égalité de tous devant la loi. Par conséquent, la Loi sur les Indiens devrait être modifiée afin d'être conforme à la Charte, et ce, avant le 17 avril 1985, date à laquelle l'article 15 entrera en vigueur.

## Points examinés précédemment par le Parlement

En septembre 1982, le Sous-comité de la Chambre des communes sur les Indiennes et la Loi sur les Indiens recommandait:

- que personne ne perde ou n'acquière le statut ou le droit d'appartenance à une bande en raison de son mariage;
- b) que les enfants dont un parent au moins est un Indien aient droit au statut en vertu de la Loi sur les Indiens et puissent devenir membres d'une bande;
- c) que les femmes qui, en vertu de la Loi sur les Indiens, ont perdu leur statut et leur appartenance à la bande, recouvrent ces droits ainsi que les enfants de la première génération.

Recréé sous le nom de Comité spécial sur l'autonomie politique des Indiens, ce groupe a rédigé un rapport (rapport Penner, novembre 1983) qui précise que chaque gouvernement des premières nations devrait avoir le droit de déterminer son effectif. Le Comité a recommandé le recours à une liste générale comme façon de reconnaître le statut aux personnes n'étant pas membres des nations indiennes.

La dernière tentative faite pour résoudre cette question, soit la présentation du projet de loi C-47, a échoué. Bien que le projet de loi ait été adopté à la Chambre des communes le 29 juin 1984, date de la dernière séance de la législature, le Sénat n'a pas réussi à faire l'unanimité nécessaire pour son adoption. Le projet de loi C-47 n'est donc jamais allé plus loin que l'ordre du jour du Sénat en raison de la dissolution du Parlement en vue des élections fédérales.

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Background Notes

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#### ABORIGINAL SELF-GOVERNMENT

For Canada's aboriginal peoples -- Indian, Inuit and Métis -- self-government answers two deeply felt needs: to make their own decisions based on their own priorities and policies and to preserve their cultural heritage.

These notes examine self-government arrangements for aboriginal groups under federal legislation. They focus on specific examples of aboriginal self-government and some models for the future.

### Under the Indian Act

Before Europeans settled in Canada, aboriginal peoples were self-governing collectivities, tribes and nations. Colonial regimes, however, reduced much of the authority of native political systems, as did the policies of the Canadian government.

When the <u>Indian Act</u> was first adopted in 1876, the Minister of Indian Affairs received substantial control over Indians and their lands. This balance of power, virtually unchanged for a century, has been especially challenged in the last two decades.

Band councils have bylaw-making authority under the <u>Indian</u>
Act. In recent years there has been a considerable transfer of authority to them.

Band councils now administer fully 60 per cent of federal Indian program funds. Band councils administer \$600 million in all from the Department of Indian Affairs and Northern Development and other federal sources.



## Beyond the Indian Act

A number of innovative arrangements have developed, beyond the form of band-level local administration provided for in the Indian Act. Some examples follow:

#### Sechelt Band

The Sechelt Band of British Columbia exercises maximum authority under the bylaw-making sections of the <u>Indian Act</u>. Administering its own service delivery, the band operates its welfare system, a successful housing authority and a primary school. Since 1982, two bills have been proposed by the band for the advancement of self-government. Currently, the band is requesting enactment of the Sechelt Indian Band Self-Government Bill which it has drafted.

## Tribal Councils

Many bands have formed treaty councils to handle administration. For instance, the Dakota-Ojibway Tribal Council is a formal unification of seven bands, with 7,000 members in all, in southern Manitoba. The tribal council runs major programs such as policing, fire protection, child welfare and cultural programs. In the first 10 months of 1984-85, it administered \$4.8 million turned over by the Department of Indian Affairs and Northern Development.

## Cree/Naskapi (of Quebec) Act

Passed by Parliament in June, 1984, pursuant to section 9 of the James Bay and Northern Quebec Agreement and section 8 of the Northeastern Quebec Agreement, the Cree/Naskapi (of Quebec) Act creates band corporations replacing band governments that operated under the Indian Act. Consequently, the Indian Act no longer applies to the eight Cree bands and the one Naskapi band, except with respect to their status off reserve. (The measure of self-government achieved in this case is a direct consequence of the comprehensive land claim settlement outlined in the agreements above.)

The Cree and Naskapi band corporations have greater powers than those given by the bylaw-making sections of the Indian Act and exercise most of their powers independently of the Minister of Indian Affairs and Northern Development. They have the legal capacity to sue and be sued, can alienate their own lands under specific conditions, and can borrow from private sources. Band operations are supported by grants from the federal government, which are accounted for in a manner

specified in the <a href="Cree/Naskapi">Cree/Naskapi</a> (of Quebec) Act. Their specific interests are served by boards, committees and organizations integrated with provincial institutions and described in Quebec laws.

## Western Arctic (Inuvialuit) Agreement

The Inuvialuit final comprehensive claims agreement, signed in June, 1984, provides extensive land ownership and a full range of Inuvialuit-run regulatory and advisory bodies. The agreement establishes a framework within which the Inuvialuit will enjoy an increasing degree of autonomy over their own affairs but makes no specific reference to Inuvialuit self-government. Ultimate responsibility for environmental management and regulation of development activities remains with the federal government.

#### Nunavut

After many years of discussion, a 1982 plebiscite in the Northwest Territories indicated that the majority of voters supported division into two independent territories. If strong disagreements about where to draw the boundary are overcome, there would be an Arctic territory called Nunavut, where the Inuit would be a majority, and a western territory including the Mackenzie Valley and Great Slave Lake area, with more equal proportions of aboriginal people and non-aboriginal people. Their goal is to transform the Northwest Territories into two territories by 1987.

## Recent Constitutional Developments

On the constitutional side, in preparatory meetings for the 1985 First Ministers Conference (FMC) on aboriginal peoples — held in December, 1984, with representatives of the federal, territorial and provincial governments and of the four national aboriginal groups — the federal Minister of Justice, John Crosbie, stated anew that the federal government is committed to the concept of self-government and to seeing it reflected in the Constitution. He noted that governments agree constitutional change should occur but that, as was evident at the two previous FMCs on aboriginal constitutional matters, most reject the notion of entrenching in the Constitution a general, undefined right to self-government.

At the December, 1984, meeting, Mr. Crosbie and Mr. Crombie brought forward a proposal that would recognize in the Constitution the right of aboriginal peoples to govern

themselves, subject to the development of self-government agreements through regional negotiations with aboriginal communities. This approach would allow negotiations at the community level to address practical issues while constitutional protection would be afforded to the resulting agreements between governments and the aboriginal communities.

Further Ministerial-level discussions were held in Toronto March 11 and 12, 1985 in preparation for this year's conference.

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## **First Ministers** Conference

The Rights of Aboriginal Peoples

## Conférence des premiers ministres

Les droits des autochtones

Ottawa, April 2-3, 1985

Ottawa, les 2 et 3 avril 1985

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## - C52 L'AUTONOMIE GOUVERNEMENTALE DES AUTOCHTONES

Pour les peuples autochtones du Canada (Indiens, Inuit et Métis), l'autonomie gouvernementale répond à deux besoins profonds: prendre leurs propres décisions à partir de priorités et de politiques qu'ils ont eux-mêmes déterminées, et préserver leur patrimoine culturel.

Le présent exposé examine les dispositions de la législation fédérale à l'égard de l'autonomie gouvernementale des groupes autochtones. On y donne des exemples précis d'autonomie et propose certains modèles pour l'avenir.

## Perspective historique

Avant que les Européens viennent s'établir au Canada, les autochtones étaient regroupés en collectivités, tribus et nations politiquement autonomes. Les régimes coloniaux, cependant, ont fait perdre beaucoup d'autonomie politique aux peuples autochtones tout comme l'ont fait les politiques du gouvernement canadien.

La Loi sur les Indiens de 1876 autorisait le ministre des Affaires indiennes à exercer une mainmise importante sur les Indiens et sur leurs terres. Cette attribution de pouvoirs, qui est pour ainsi dire demeurée la même pendant un siècle, a été contestée surtout au cours des deux dernières décennies.

La Loi sur les Indiens permet aux conseils de bandes d'établir des statuts administratifs. Plusieurs pouvoirs leur ont été transférés ces dernières années.

Les conseils de bandes ont aussi progressivement assumé la responsabilité entière de l'administration de 60 pour cent des fonds consacrés aux programmes fédéraux des autochtones.



C'est ainsi qu'ils administrent quelque 600 millions de dollars qui leur sont versés par le ministère des Affaires indiennes et du Nord et d'autres organismes fédéraux.

#### Outre la Loi sur les Indiens

Plusieurs aménagements nouveaux ont été mis au point, dépassant les dispositions de la Loi sur les Indiens sur l'administration locale par le conseil de bande. En voici quelques exemples:

## Bande Sechelt

La Loi sur les Indiens confère le pouvoir d'établir des statuts administratifs et la bande Sechelt, de la Colombie-Britannique, est l'une des bandes qui exercent le plus les pouvoirs conférés par ces articles. Cette bande administre ses propres services, offre elle-même des services de bien-être social et dirige avec succès une société de logement et une école primaire. Depuis 1982, la bande a présenté deux projets de loi dans le but d'en arriver à l'autonomie gouvernementale. Elle tente présentement de faire adopter une loi qui lui octroyerait l'autonomie gouvernementale.

#### Conseils de tribu

Plusieurs bandes se sont dotées de conseils de traité pour s'occuper de questions administratives. Le conseil tribal Dakota-Ojibway regroupe officiellement sept bandes ou 7 000 membres du sud du Manitoba. Le conseil de tribu est responsable de programmes aussi importants que les services de police, la prévention des incendies, la protection de l'enfance et les programmes culturels. Au cours des dix premiers mois de l'année 1984-1985, il a administré un montant de 4,8 millions de dollars que lui a versé le ministère des Affaires indiennes et du Nord.

## Loi sur les Cris et les Naskapis du Québec

Adoptée par le Parlement en juin 1984, conformément à l'article 9 de la Convention de la Baie James et du Nord québécois et à l'article 8 de la Convention du Nord-Est québécois, la Loi sur les Cris et les Naskapis du Québec remplace les administrations de bandes mises en place en vertu

de la Loi sur les Indiens par des administrations locales dotées d'une person- nalité morale. Par conséquent, la Loi sur les Indiens nes'applique plus aux huit bandes cries ni à la bande des Naskapis, sauf en ce qui concerne leur situation à l'extérieur des réserves. (Le degré d'autonomie gouvernementale atteint dans ce cas découle directement du règlement complet des revendications territoriales exposé dans les conventions susmentionnées.)

L'étendue des pouvoirs des administrations locales des bandes cries et naskapis est plus vaste que celle prévue par la Loi sur les Indiens en matière d'établissement de statuts administratifs, et ces bandes peuvent exercer la plupart de leurs pouvoirs sans qu'il soit nécessaire que le ministre des Affaires indiennes et du Nord intervienne. Elles ont la capacité d'ester en justice, soit en demande soit en défense et peuvent vendre leurs propres terres sous réserve de certaines conditions et emprunter des sommes d'argent du secteur privé. Les bandes ont droit à des subventions du gouvernement fédéral et doivent rendre compte des sommes obtenues conformément à la Loi sur les Cris et les Naskapis du Québec. Leurs intérêts sont défendus par des conseils, des comités et des organismes provinciaux créés par des lois du Québec.

## Convention définitive des Inuvialuit (Arctique de l'Ouest)

La Convention définitive des Inuvialuit, qui a été signée en juin 1984, prévoit l'octroi de vastes terres aux Inuvialuit et la constitution de plusieurs organismes investis de pouvoirs de consultation ou de réglementation dirigés par ces derniers. Cette convention permet aux Inuvialuit de s'occuper davantage de leurs propres affaires mais ne traite pas expressément de leur autonomie gouvernementale. Le gouvernement fédéral demeure responsable des activités concernant la gestion de l'environnement et la réglementation de l'expansion.

#### Nunavut

Après plusieurs années de discussion, un référendum tenu dans les Territoires du Nord-Ouest en 1982 a révélé que la majorité des électeurs des territoires étaient favorables à la division de ces derniers. Il reste à régler un grave différend sur le tracé de la frontière, mais s'il y a entente sur le sujet, on formerait un territoire de l'Arctique appelé Nunavut où les Inuit formeraient la majorité, et un territoire de l'Ouest comprenant la vallée du MacKenzie et la région du Grand Lac des Esclaves, où la population est partagée plus également

entre autochtones et non-autochtones. L'objectif est de faire des Territoires du Nord-Ouest deux territoires distincts d'ici 1987.

#### Faits constitutionnels nouveaux

À l'occasion des rencontres entre les représentants des gouvernements fédéral, provinciaux et territoriaux et les représentants des quatre associations autochtones nationales qui ont eu lieu en décembre 1984 et qui avaient pour but de préparer la Conférence des premiers ministres de 1985 sur les questions constitutionnelles intéressant les autochtones, le ministre fédéral de la Justice, M. John Crosbie, a déclaré à nouveau que le gouvernement fédéral reconnaît le concept de l'autonomie gouvernementale et qu'il aimerait le voir refléter dans la Constitution. Il a signalé que tous les gouvernements conviennent que des modifications constitutionnelles s'imposent, mais qu'il était évident, depuis les deux dernières conférences des premiers ministres sur les questions constitutionnelles intéressant les autochtones, que la plupart s'opposent à l'idée d'enchâsser un droit général et mal défini à l'autonomie gouvernementale dans la Constitution.

Lors de la réunion de décembre 1984, MM. Crosbie et Crombie ont proposé que le droit des autochtones de se gouverner eux-mêmes soit reconnu dans la Constitution sous réserve des accords d'autonomie gouvernementale qui pourraient être conclus par suite de négociations régionales avec les collectivités autochtones. Cette façon d'aborder la question permettrait de mener des négociations avec les diverses collectivités pour régler les problèmes d'ordre pratique et accorderait en même temps une protection constitutionnelle aux accords que les gouvernements et les collectivités autochtones conclueraient par la suite.

D'autres rencontres ministérielles ont eu lieu à Toronto les 11 et 12 mars derniers afin de préparer la prochaine conférence.

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## First Ministers Conference

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Background Notes

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CANADA'S ABORIGINAL PEOPLES - WHO THEY ARE

"Aboriginal," generally speaking, refers to the descendants of the original inhabitants of Canada. The Constitution Act, 1982 specifies that aboriginal peoples include the Indian, Inuit and Métis peoples of Canada.

These notes describe the various groups in terms of legal status and ancestry, numbers, geographical distribution and languages.

## Definition

There are no specific legal definitions for all of the three aboriginal groups; however, general descriptions follow:

## Indians

Status Indians, also known as registered Indians, are persons with status within the meaning of the Indian Act, and whose names are included on a register kept by the federal government.

Under the <u>Indian Act</u>, until now, the right to be registered was passed on by the male line; to have Indian status, one's father must have been an Indian, except a non-Indian woman who marries an Indian. An Indian woman who married a non-Indian lost her status, and her children were not registered, while a non-Indian woman gained Indian status by marriage to an Indian.

However, legislation was introduced on February 28, 1985, to end sexual discrimination in the determination of Indian



status, in line with the <u>Canadian Charter of Rights and Freedoms</u>. Persons who lost status as a result of the <u>discriminatory</u> legislation will regain status, as will their children. As well, bands who wish to control their membership in the future have the option to do so. For more details, see the background notes called "Removal of Discrimination from the Indian Act."

Non-status Indians are persons of Indian ancestry who for one reason or another do not have status under the Indian Act. These include Indian women who lost their status by marriage to a non-Indian, Indians who surrendered or lost status by "enfranchisement" under certain sections of the Indian Act, the offspring of such persons and Indians who were never registered under the Indian Act.

Treaty Indians are descendants of persons who signed treaties with the Crown since Confederation.

### Inuit

The Inuit reside primarily in the Northwest Territories, northern Quebec and Labrador.

The federal government's power to make laws with respect to "Indians, and Lands reserved for the Indians" was interpreted to extend to Inuit by the Supreme Court of Canada in 1939.

The Inuit were known for hundreds of years as Eskimos, the name used by the early European explorers. However, they now actively promote the Inuktitut name they themselves use -- Inuit, which means the People. This name is now being used by the federal government in statutes and other documents.

#### Métis

There is, as yet, no universally-accepted definition of the term Métis, but rather two differing approaches to a definition. According to one approach, all persons of mixed aboriginal and non-aboriginal ancestry, and who identify as Métis, may be considered as Métis, regardless of where they or their ancestors resided in Canada.

The other approach includes as Métis those persons whose ancestors inhabited western and northern Canada and received land grants and/or scrip, and other persons of aboriginal ancestry who identify as Métis and are recognized as Métis by the Métis community.

## Demographic and Cultural Characteristics

According to census information, the aboriginal population has increased faster than the national rate since the 1950s.

There are six recognized Indian cultural areas across Canada and 10 Indian linguistic groups -- Algonkian (the largest group, it includes Cree and Ojibway), Iroquoian, Siouan, Athapaskan, Kootenayan, Salishan, Wakashan, Tsinshian, Haida and Tlingit. The Inuit speak Inuktitut.

The statistics which follow are from the 1981 Census, except where indicated.  $^{\rm l}$ 

## Status Indians

#### Population

- The 1981 Census places the population at 292,700. However, projections from the Department of Indian Affairs and Northern Development (DIAND) for 1985 place the total for status Indians at 366,200. Of these, 258,800 are on reserves and 107,400 off reserves. DIAND estimates that in 1984, 30 per cent of status Indians lived off-reserve.

#### Location

- Largest concentrations are in the Prairies (38.6 per cent), Ontario (24 per cent) and British Columbia (18.5 per cent).
- There are approximately 2,250 parcels of reserve land divided among about 580 bands. Total area involved is 26,525 square kilometres. Average band population is 550 persons; only 16 bands (three per cent) have a population of more than 2,000.

#### Language

- 46.6 per cent of status Indians on reserves reported a native language as their mother tongue, 46.4 per cent reported English, and 1.8 per cent reported French.

Statistics Canada. <u>Canada's Native People</u>. Ottawa: June, 1984; Department of Indian Affairs and Northern Development, Research Division.

- 18 per cent of status Indians off reserves reported a native language as their mother tongue, 71.9 per cent reported English and 4.6 per cent reported French.

## Non-Status Indians

Population - 75,110 identified themselves as non-status Indians.

Location - Largest concentrations are in Ontario (34.7 per cent), British Columbia (25.4 per cent) and the Prairies (24.7 per cent).

- Seven out of 10 live in urban areas.

Language - 9.5 per cent claim a native language as their mother tongue, 79.5 per cent claim English, and 6.6 per cent claim French.

#### Métis

Population - 98,260 identified themselves as Métis.

Location - Fully two-thirds live in the Prairie provinces (66.2 per cent).

- Six out of 10 live in urban areas.

Language - 13.9 per cent claim a native language as their mother tongue, 75 per cent claim English and 8.9 per cent claim French.

#### Inuit

Population - DIAND population projections for 1985 place the total at 28,000.

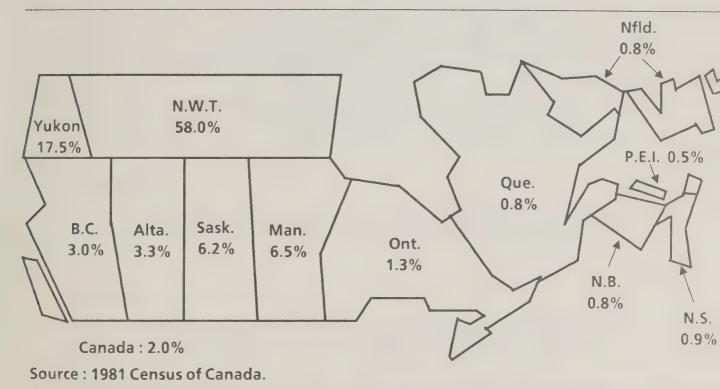
Location - Largest concentrations are in the Northwest Territories (63 per cent) and Northern Quebec (19.2 per cent).

- Communities are situated mainly on bays, river mouths, inlets and fiords -- for example in the Mackenzie Delta, along the mainland coast of the Northwest Territories, along the shores of Hudson and Ungava Bays and in settlements on the Arctic islands.

#### Language

- 74.1 per cent claim a native language as their mother tongue, and of that number 73.8 per cent speak Inuktitut. 24.2 per cent of Inuit claim English as their mother tongue and 0.9 per cent claim French.

# Native People as a Percentage of the Total Population, Provinces and Territories, 1981



#### General

#### Population

- Between 1941 and 1981, the aboriginal population increased by 205 per cent, compared with an increase of 109 per cent in the non-aboriginal population.
- Earlier records (1901-1931) show a relatively stable native population averaging about 120,000.
- The highest fertility rates are reported by status Indians, an average of 4.8 children born to each woman who was ever married, followed by the Inuit with 4.6.

- Almost 40 per cent of aboriginal peoples are under 15 years of age and only three per cent are 65 or older, compared with 22 per cent under 15 and nine per cent 65 or older in the non-aboriginal population.
- Aboriginal peoples account for about two per cent of Canada's population.

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LES AUTOCHTONES DU CANADA ... QUI SONT-ILS?

En règle générale, le terme "autochtones" désigne les descendants des premiers habitants du Canada. La Loi constitutionnelle de 1982 précise qu'il s'applique aux Indiens, aux Inuit et aux Métis du Canada.

Les notes suivantes traitent du statut juridique, des origines, de l'importance numérique, de la répartition géographique et de la lanque des divers groupes autochtones.

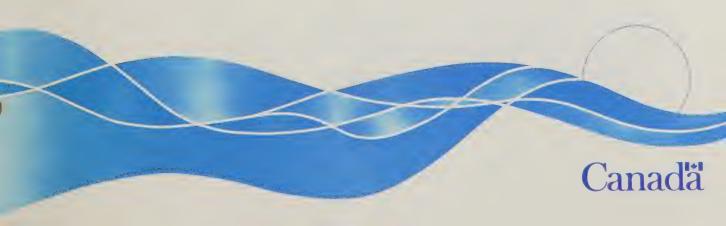
## Définition

Il n'existe aucune définition juridique précise des trois groupes autochtones; en voici toutefois une description générale.

#### Indiens

Les Indiens inscrits au sens de la Loi sur les Indiens sont ceux dont le nom figure sur le registre tenu par le gouvernement fédéral.

Jusqu'à maintenant, la Loi sur les Indiens prévovait que le droit à l'inscription était transmis par les hommes; le père, ou l'époux dans le cas d'une non-Indienne, devait être un Indien. Une femme indienne qui épousait un non-Indien perdait son statut, et ses enfants ne pouvaient être inscrits sur le registre des Indiens. Par contre, une non-Indienne qui épousait un Indien se voyait accorder le même statut que ce dernier.



Toutefois, un projet de loi a été déposé le 28 février 1985 qui vise à mettre fin à toute discrimination fondée sur le sexe au chapitre de la détermination du statut, conformément à la Charte canadienne des droits et libertés. Les personnes avant perdu leur statut en raison des dispositions discriminatoires de la Loi, ainsi que leurs enfants, pourront le recouvrer. De même, les bandes qui souhaitent contrôler leurs effectifs seront désormais en mesure de le faire. Pour plus de renseignements, prière de consulter les notes documentaires intitulées "La suppression des dispositions discriminatoires dans la Loi sur les Indiens".

Les Indiens non inscrits sont ceux de descendance indienne qui, pour une raison quelconque, n'ont pas été inscrits en vertu de la Loi sur les Indiens. Il y a par exemple les femmes qui ont perdu leur statut en raison de leur mariage à un non-Indien, les cas d'"émancipation" volontaire et de renonciation au statut en vertu de certains articles de la Loi sur les Indiens, les enfants de ces derniers et ceux qui n'ont jamais été inscrits conformément à la Loi.

Les Indiens soumis au régime d'un traité sont les descendants de ceux qui ont signé des traités avec la Couronne depuis la Confédération.

#### Inuit

Les Inuit habitent les Territoires du Mord-Ouest, le Nouveau-Québec et le Labrador.

En 1939, la Cour suprême du Canada statuait que le pouvoir du gouvernement fédéral de légiférer à l'égard des "Indiens et (des) terres réservées aux Indiens" s'étendait aux Inuit.

Pendant des siècles, les Inuit ont été connus sous le nom d'Esquimaux, expression utilisée par les premiers explorateurs européens. Cependant, ils cherchent à imposer le nom inuktitut qu'ils utilisent eux-mêmes, soit "Inuit", qui veut dire "les Gens". C'est de cette appellation que se sert désormais le gouvernement fédéral dans les lois et les autres documents.

## Métis

Il n'existe pas encore de définition universellement reconnue du terme "Métis", mais deux tendances s'affrontent. D'un côté, on estime que toute personne d'ascendance mixte autochtone et non autochtone qui se dit métisse peut être considérée comme telle, quel que soit son lieu de résidence, ou celui de ses ancêtres, au Canada.

De l'autre, on affirme que le terme "Métis" désigne toute personne dont les ancêtres habitaient l'ouest ou le nord du Canada et s'étaient vu octroyer des terres ou des certificats de concession, et toute personne d'ascendance autochtone qui se dit métisse et, à ce titre, est reconnue par la collectivité métisse.

# Caractéristiques démographiques et culturelles

Selon les recensements, le taux de croissance de la population autochtone est plus élevé que le taux national depuis les années 50.

Il existe au Canada six régions culturelles indiennes reconnues, et dix groupes linguistiques indiens: le plus important, l'algonquien, comprend le cri et l'ojibway; les autres sont l'iroquoien, le siouen, l'athapascan, le kootenayen, le salishen, le wakashen, le tsimshen, l'haida et le tlingit. Les Inuit parlent l'inuktitut.

Les statistiques qui suivent proviennent du recensement de 1981, sauf indication contraire 1.

#### Indiens inscrits

#### Population

Le recensement de 1981 établit la population à 292 700. Toutefois, des projections du ministère des Affaires indiennes et du Nord (MAIN) pour 1985 estiment à 366 200 le total des Indiens inscrits. De ce nombre, 258 800 vivent dans des réserves et 107 400 vivent à l'extérieur. Le MAIN estime qu'en 1984, 30 pour cent des Indiens inscrits tombaient dans cette dernière catégorie.

# Situation géographique

Les groupes les plus considérables vivent dans les Prairies (38,6 pour cent), en Ontario (24 pour cent) et en Colombie-Britannique (18,5 pour cent).

Statistique Canada. Les Autochtones au Canada, Ottawa, Juin 1984: Ministère des Affaires indiennes et du Nord, Division de la recherche.

Quelque 580 bandes se partagent environ 2 250 parcelles de terres de réserve totalisant 26 525 kilomètres carrés. La population moyenne d'une bande est de 550 personnes; 16 bandes (3 pour cent) seulement ont une population supérieure à 2 000 personnes.

#### Langues

- 46,6 pour cent des Indiens inscrits habitant des réserves considèrent une langue autochtone comme leur langue maternelle, alors que 46,4 pour cent estiment que c'est l'anglais et 1,8 pour cent, que c'est le français.
- Quant aux Indiens inscrits habitant à l'extérieur des réserves, 18 pour cent considèrent que leur langue maternelle est une langue autochtone, 71,9 pour cent disent qu'il s'agit de l'anglais et 4,6 pour cent, que c'est le français.

# Indiens non inscrits

- Population 75 110 se considèrent comme Indiens non inscrits.
- Situation Les groupes les plus considérables se trouvent en Ontario (34,7 pour cent), en Colombie-Britannique (25,4 pour cent) et dans les Prairies (24,7 pour cent).
  - Sept Indiens non inscrits sur dix vivent dans des agglomérations urbaines.

#### Langues

9,5 pour cent considèrent que leur langue maternelle est une langue autochtone alors que 79,5 pour cent disent que c'est l'anglais et 6,6 pour cent, que c'est le français.

#### Métis

Population - 98 260 se considèrent comme Métis.

Situation - Les deux tiers des Métis habitent les géographique Prairies (66,2 pour cent).

Six Métis sur dix vivent dans des agglomérations urbaines.

Langues - 13,9 pour cent des Métis considèrent que leur langue maternelle est une langue autochtone alors que 75 pour cent disent que c'est l'anglais et 8,9 pour cent, que c'est le français.

#### Inuit

Population - Les prévisions du MAIN indiquent une population totale de 28 000 en 1985.

Situation - Les groupes les plus considérables se trouvent dans les Territoires du Nord-Ouest (63 pour cent) et dans le Nouveau-Québec (19,2 pour cent).

- Les communautés se trouvent principalement près des baies, à l'embouchure des rivières, près des anses et des fjords -- par exemple le delta du Mackenzie, le long de la côte continentale des Territoires du Nord-Ouest, des rives de la baie d'Hudson et de la baie d'Ungava, et dans les agglomérations des îles de l'Arctique.

Langues - 74,1 pour cent des Inuit considèrent que leur langue maternelle est une langue autochtone; de ce nombre, 73,8 pour cent parlent l'inuktitut. 24,2 pour cent des Inuit considèrent que leur langue maternelle est l'anglais et 0,9 pour cent, que c'est le français.

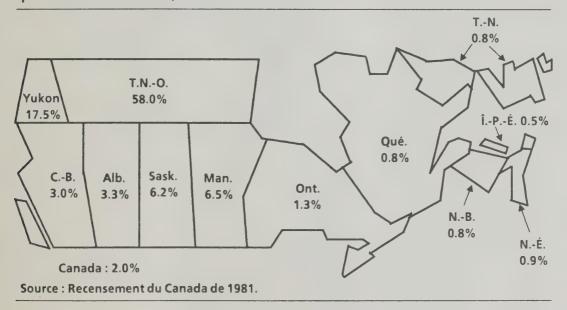
# Renseignements généraux

# Population

- De 1941 à 1981, la population autochtone a augmenté de 205 pour cent, comparativement à une augmentation de 109 pour cent chez les non-autochtones.
- Des statistiques antérieures (1901-1931) révèlent une population autochtone relativement stable, se maintenant à environ 120 000 âmes.
- Les Indiens inscrits ont le taux de natalité le plus élevé, soit en moyenne 4,8 enfants par femme mariée. La moyenne est de 4,6 chez les Inuit.

- Près de 40 pour cent des autochtones ont moins de 15 ans et seulement 3 pour cent d'entre eux ont 65 ans ou plus, alors que chez les non-autochtones, 22 pour cent ont moins de 15 ans, et 9 pour cent ont 65 ans ou plus.
- L'ensemble de la population autochtone représente environ deux pour cent de la population canadienne.

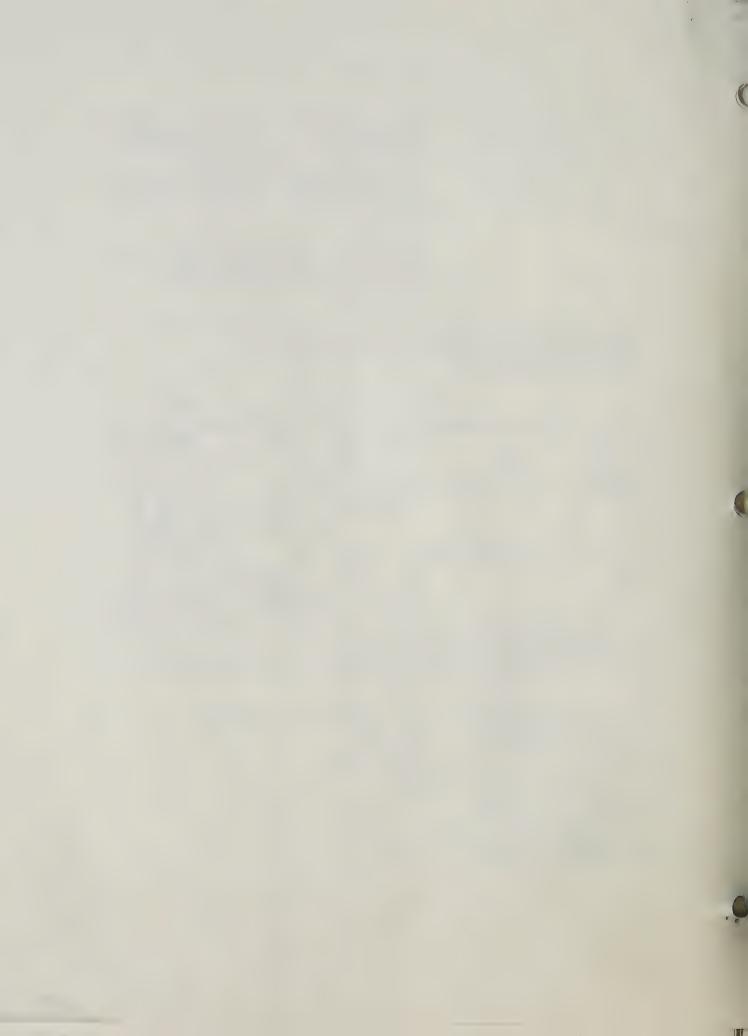
Pourcentage d'autochtones par rapport à la population totale, provinces et territoires, 1981



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# What the Constitution says about aboriginal peoples



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All Canadians have a stake in their Constitution as the basic law that spells out the powers of governments and the rights of people.

But the Constitution also addresses the special concerns of many distinct groups, for it is the legal cornerstone of the minority rights that are a cherished part of the Canadian heritage.

Because of the unique place that aboriginal peoples have in Canadian history and society, they are among those who get special attention in the Constitution.

### A long history

As far back as 1763, the rights of aboriginal peoples in vast reaches of what is now Canada were recognized in the *Royal Proclamation* that established governments in Britain's new American colonies.

At the birth of Confederation, "Indians, and Lands reserved for the Indians" were among the classes of subject placed under federal jurisdiction by section 91 of the Constitution Act, 1867 (then called the British North America Act). The Supreme Court of Canada later ruled that this jurisdiction also encompassed the Inuit.

# Constitutional recognition

On April 17, 1982, the Constitution Act, 1982 came into force. The best known features of this constitutional enactment are the Canadian Charter of Rights and Freedoms and the new

constitutional amending formula. In addition, the Constitution Act, 1982:

- Affirmed and recognized the existing aboriginal and treaty rights of the aboriginal peoples of Canada.
- Provided for the convening of a First Ministers Conference on aboriginal matters, to which aboriginal representatives would be invited as participants.

# A first accord

When the promised conference met in Ottawa on March 15-16, 1983, it reached a constitutional accord, signed by the federal government and nine provinces\* and concurred in by the four aboriginal associations and both territorial governments. Its terms included:

- Provision for three more conferences one before March 16, 1984, one before April 17, 1985, and the third before April 17, 1987 (the latter two guaranteed by the Constitution).
- Constitutional commitment that before any further amendments to provisions of the Constitution dealing with aboriginal people, aboriginal leaders would be invited to participate in a constitutional conference with First Ministers to discuss the proposed change.
- Equal guarantee in the constitution of existing aboriginal and treaty rights to women and men.
- Constitutional recognition of rights acquired through both future and existing land claims agreements.

<sup>\*</sup>The government of Quebec did not sign the accord because of its position on the Constitution Act, 1982.

After ratification by Parliament and the legislatures of the nine provinces, the constitutional changes agreed to in the accord were proclaimed on June 21, 1984, as the Constitution Amendment Proclamation, 1983, becoming the first "made-in-Canada" amendments under the new amendment formula set out in the Constitution Act, 1982.

# Canadian Charter of Rights and Freedoms

As amended, Part I of the Constitution Act, 1982 (that is, the Canadian Charter of Rights and Freedoms) now provides:

Aboriginal rights and freedoms not affected by Charter

- 25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including:
  - (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
  - (b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

Before amendment, subsection 25(b) read: "any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement."

# Rights of the aboriginal peoples of Canada

As amended, Part II of the Constitution Act, 1982 now reads:

existing aboriginal and treaty rights

Recognition of 35, (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Definition of "aboriginal peoples of Canada"

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada

Land claims agreements

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

Aboriginal and treaty rights are guaranteed equally to both sexes

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

Commitment to participation in constitutional conference

- 35.1 The government of Canada and the provincial governments are committed to the principle that, before any amendment is made to Class 24 of section 91 of the Constitution Act, 1867, to section 25 of this Act or to this Part.
  - (a) a constitutional conference that includes in its agenda an item relating to the proposed amendment, composed of the Prime Minister of Canada and the first ministers of the provinces, will be convened by the Prime Minister of Canada; and
  - (b) the Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in the discussions on that item.

Subsections 35(3) and 35(4) and section 35.1 were added by the amendments.

#### Constitutional conferences

A new part added to the Constitution Act, 1982 by the amendments reads:

#### **PART IV.1**

#### CONSTITUTIONAL CONFERENCES

Constitutional conferences

37.1 (1) In addition to the conference convened in March 1983, at least two constitutional conferences composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada, the first within three years after April 17, 1982 and the second within five years after that date.

Participation of aboriginal peoples

(2) Each conference convened under subsection (1) shall have included in its agenda constitutional matters that directly affect the aboriginal peoples of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on those matters.

Participation of territories

(3) The Prime Minister of Canada shall invite elected representatives of the governments of the Yukon Territory and the Northwest Territories to participate in the discussions on any item on the agenda of a conference convened under subsection (1) that, in the opinion of the Prime Minister, directly affects the Yukon Territory and the Northwest Territories.

Subsection 35(1) not affected

(4) Nothing in this section shall be construed so as to derogate from subsection 35(1).

The former Part IV, which provided for the 1983 constitutional conference, was automatically repealed on April 17, 1983.

#### General provisions

New sections added to the Constitution Act, 1982 read:

Repeal of Part IV.1 and this section are repealed on April 1V.1 and this section 18, 1987.

References

61. A reference to the Constitution Acts, 1867 to 1982 shall be deemed to include a reference to the Constitution Amendment Proclamation, 1983.

# Dispositions genérales

Constitution.

le 18 avril 1987.

Les articles suivants s'ajoutent à la Loi constitutionnelle de 1982;

Abrogation de 54.1 La Partie IV.1 et le présent article sont abrogés

et du présent article Mentions

61. Toute mention des Lois constitutionnelles de 1867 à 1982 est réputée constituer également une mention de la Proclamation de 1983 modifiant la

#### PARTIE IV.1

# CONSTITUTIONNELLES CONFÉRENCES

37.1 (1) En sus de la conférence convoquée en mars 1983, le premier ministre du Canada convoque au moins deux conférences constitutionnelles réunissant les première annistres provinciaux et lui-même, la première dans les trois ans et la seconde dans les cinq ans suivant le 17 avril 1982.

Conférences constitutionnelles

(2) Sont placées à l'ordre du jour de chacune des conférences visées au paragraphe (1) les questions constitutionnelles qui intéressent directement les peuples autochtones du Canada. Le premier ministre du Canada invite leurs représentants à participer aux travaux relatifs à ces questions.

Participation des peuples autochtones

du Canada invite leurs représentants à participer aux travaux relatifs à ces questions.

(3) Le premier ministre du Canada invite des représentants élus des gouvernements du territoire du

Participation des territoires

(3) Le premier ministre du Canada invite des représentants élus des gouvernements du territoire du Yukon et des territoires du Nord-Ouest à participer aux travaux relatifs à toute question placée à l'ordre du jour des conférences visées au paragraphe (1) et qui, selon lui, intéresse directement le territoire du Yukon et les territoires du Nord-Ouest.

(4) Le présent article n'a pas pour effet de déroger au paragraphe 35(1).

Nondérogation au paragraphe 35(1)

L'ancienne partie IV, qui prévoyait la convocation d'une conférence constitutionnelle en 1983, a été automatiquement abrogée le 17 avril 1983.

Définition de «peuples autochtones du Canada»

(2) Dans la présente loi, «peuples autochtones du Canada» s'entend notamment des Indiens, des Inuit et des Métis du Canada.

(3) Il est entendu que sont compris parmi les droits issus de traités, dont il est fait mention au paragraphe (1), les droits existants issus d'accords sur des revendications territoriales ou ceux susceptibles d'être ainsi

Accords sur des revendications

revendications territoriales

Égalité de (4) Ind

acquis.

(4) Indépendamment de toute autre disposition de la présente loi, les droits — ancestraux ou issus de traités — visés au paragraphe (1) sont garantis également aux personnes des deux sexes.

Engagement relatif à la participation à une conférence constirutionnelle

droits pour les

35.1 Les gouvernements fédéral et provinciaux sont liés par l'engagement de principe selon lequel le premier ministre du Canada, avant toute modification de la catégorie 24 de l'article 91 de la Loi constitutionnelle de 1867, de l'article 25 de la présente loi ou de la présente partie:

a) convoquera une conférence constitutionnelle réunissant les premiers ministres provinciaux et luimême et comportant à son ordre du jour la ques-

tion du projet de modification;
b) invitera les représentants des peuples autochtones du Canada à participer aux travaux relatifs à nes du Canada à participer aux travaux relatifs à

cette question.

Il convient de noter que les paragraphes 35(3) et 35(4) de même que l'article 35.1 ont été ajoutés par les modifications considérées.

Les conférences constitutionnelles

Une nouvelle partie de la Loi constitutionnelle de 1982 prévoit ce qui suit :

Entrées en vigueur le 21 juin 1984 après avoir été ratifiées par le Parlement fédéral et l'assemblée législative des neuf provinces en cause, les modifications constitutionnelles prévues dans cet accord sont ainsi devenues les premières mesures prises par le Canada, sans aucune intervention extérieure, en vertu de la nouvelle formule de modification prévue par la Loi constitutionnouvelle de 1982.

# La Charte canadienne des droits et libertés

Dans sa version modifiée, la partie I de la Loi constitutionnelle de 1982 (Charte canadienne des droits et libertés) prévoit ce qui suit en son article 25:

25. Le sait que la présente charte garantit certains droits et libertés ne porte pas atteinte aux droits ou libertés — ancestraux, issus de traités ou autres — des peuples autochtones du Canada, notamment:

Maintien des droits et libertés des autochtones

a) aux droits ou libertés reconnus par la Proclamation royale du 7 octobre 1763;
b) aux droits ou libertés existants issus d'accords sur des revendications territoriales ou ceux suscen-

sur des revendications territoriales ou ceux susceptibles d'être ainsi acquis.

Avant cette modification, le paragraphe 25b) était ainsi rédigé : «aux droits ou libertés acquis par règlement de revendications territoriales.»

# Les droits des peuples autochtones du Canada

Dans sa forme modifiée, la partie II de la Loi constitutionnelle de 1982 prévoit ce qui suit :

35. (1) Les droits existants — ancestraux ou issus de traités — des peuples autochtones du Canada sont reconnus et confirmés.

Confirmation des droits existants des peuples autochtones

- Reconnaît les droits, ancestraux ou issus de traités, des peuples autochtones du Canada.
- Prévoit la convocation de la conférence des premiers ministres portant sur les questions intéressant les peuples autochtones, conférence aux travaux de laquelle les représentants de ces derniers devaient être invités.

# Un premier accord

La conférence qui, en application des dispositions que nous venons de mentionner, se tint à Ottawa les 15 et 16 mars 1983 permit d'en arriver à un accord constitutionnel que signèrent le gouvernement fédéral et les gouvernements de neuf\* provinces et auquel souscrivirent les quatre associations d'autochtones et les gouvernements du territoire du Yukon et des territoires du Nord-Ouest. Cet accord:

- Prévoit la convocation de trois autres conférences, la première avant le 16 mars 1984, la deuxième avant le 17 avril 1985 et la troisième avant le 17 avril 1987; la convocation des deux dernières de ces conférences est garantie par la Constitution.
- Contient un engagement de principe de convoquer une conférence constitutionnelle réunissant les premiers ministres et les représentants des peuples autochtones afin de discuter, au préalable, de toutes mesures visant à modifier les dispositions constitutionnelles relatives aux peuples autochtones.
- Dispose que les droits, ancestraux ou issus de traités, dont bénéficient les autochtones sont garantis également aux personnes des deux sexes.
- Donne la valeur constitutionnelle aux droits issus d'accords portant un règlement de revendications territoriales ou susceptibles d'être ainsi acquis.

<sup>\*</sup>Le gouvernement de la province de Québec n'a pas signé l'accord en raison de la position qu'il avait prise au sujet de la Loi constitutionnelle de 1982.

La Constitution est la loi fondamentale qui définit les pouvoirs de l'État et les droits des citoyens. Pour cette raison, elle intéresse chaque Canadien et chaque Canadienne de façon particulière.

La Constitution revêt également une importance toute spéciale pour divers groupes, puisqu'elle donne un fondement juridique aux droits des minorités, droits qui sont sacrés selon la tradition de notre pays.

Du sait de leur place unique dans notre histoire et dans notre société, les peuples autochtones sigurent au nombre de ceux auxquels la Constitution consacre des dispositions expresses.

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Dès 1763, les droits des peuples autochtones disséminés sur de vastes territoires qui sont devenus plus tard le Canada furent reconnus par la Proclamation royale instituant des gouvernements dans les nouvelles colonies américaines de Grande-Bretagne.

Lors de la Confédération, «les Indiens et les terres réservées aux Indiens» furent l'un des domaines que l'article 91 de la Loi constitutionnelle de 1867, qui s'appelait l'Acte de l'Amérique du Nord britannique, plaçait sous la compétence du gouvernement fédéral. La Cour suprême du Canada statua plus tard que cette compétence s'étendait également aux Inuit.

#### Reconnaissance dans la Constitution

Le 17 avril 1982, la Loi constitutionnelle de 1982 entrait en vigueur. Ici les éléments les plus frappants de ce texte sont évidemment la Charte canadienne des droits et libertés ainsi que les nouvelles formules de modification de la Constitution. Il importe aussi de se rappeler que la Loi constitutionnelle de 1982:

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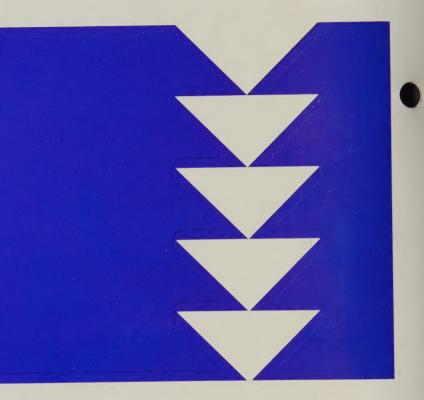


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